

**. Vol. I**

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1943**

**No. 31**

**McLEAN TRUCKING COMPANY, INC.,—THE SECRETARY OF AGRICULTURE OF THE UNITED STATES, AND AMERICAN FARM BUREAU FEDERATION, APPELLANTS**

**vs.**

**THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ASSOCIATED TRANSPORT, INC., BARNWELL BROTHERS, INC., ET AL.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK**

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1 In District Court of the United States for the Southern  
District of New York

Civil Action No. 18-116

McLEAN TRUCKING COMPANY, INC., PLAINTIFF

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ASSOCIATED TRANSPORT, INC., ARROW CARRIER CORPORATION, BARNWELL BROTHERS, INCORPORATED, CONSOLIDATED MOTOR LINES, INCORPORATED, HORTON MOTOR LINES, INCORPORATED, MCCARTHY FREIGHT SYSTEM, INC., M. MORAN TRANSPORTATION LINES, INC., SOUTHEASTERN MOTOR LINES, INCORPORATED, TRANSPORTATION, INCORPORATED, THE TRANSPORT COMPANY, KUHN, LOEB & COMPANY, BARNWELL WAREHOUSE & BROKERAGE COMPANY, BROWN EQUIPMENT & MANUFACTURING COMPANY, CONGER REALTY COMPANY, AND SOUTHERN NEW ENGLAND TERMINALS, INC., DEFENDANTS

*Bill of complaint*

*To the Honorable Judges of the District Court of the United States for the Southern District of New York:*

Comes now the plaintiff above named and for its cause of suit against the defendants alleges and shows:

I

That the plaintiff is a corporation organized and existing under the laws of the State of North Carolina, with its principal place of business at Fayetteville, in the State of North Carolina; that said plaintiff is engaged in the business of transporting general commodities for hire in interstate commerce as a common carrier by motor vehicle between points and places in the States of North Carolina, South Carolina and Virginia, on the one hand, and points and places in the District of Columbia, Maryland, Pennsylvania, Delaware, New Jersey, New York, Connecticut, Rhode Island, and Massachusetts, on the other hand; that said plaintiff is subject to regulation by the Interstate Commerce Commission and is authorized to carry on and conduct said business.

II.

That this suit is brought against the United States of America under an act of Congress approved October 22, 1913, known as the "District Court Jurisdiction Act," being part of the "Urgent

Deficiency Appropriations Act," 38 Stat. L. 219, to enjoin, set aside and annul a certain order entered by the Interstate Commerce Commission (hereinafter called the Commission) on March 16, 1942, in a proceeding known as Docket No. MC-F-1612, Associated Transport, Inc.—Control and Consolidation—Arrow Carrier Corporation, et al., and Docket No. MC-F-1613, Associated Transport, Inc.—Issuance of Securities.

### III

That the party upon whose application the order of the Interstate Commerce Commission herein referred to was made, is defendant Associated Transport, Inc., a corporation created, organized and existing under the laws of the State of Delaware, with offices and principal place of business in the City of New York, New York, in this judicial district.

(a) That defendant Associated Transport, Inc., filed application to acquire control and merge the operating rights and properties of the defendant common carriers of property by motor vehicle, and the defendant associated noncarrier companies, all as described below:

(b) Arrow Carrier Corporation, hereinafter referred to as Arrow, is a corporation organized and existing under the laws of New Jersey, with its principal place of business in Paterson, New Jersey, and conducts operations as a common carrier of property by motor vehicle in and between points in the States of New York, New Jersey, and Pennsylvania.

(c) Barnwell Brothers, Incorporated, hereinafter referred to as Barnwell, is a corporation organized and existing under the laws of North Carolina, with its principal place of business in Burlington, North Carolina, and conducts operations as a common carrier of property by motor vehicle in and between points in the State of South Carolina, on the south, extending northeastward to points in the States of Pennsylvania and New York, on the north, and to and between points in intermediate states.

(d) Consolidated Motor Lines, Incorporated, hereinafter referred to as Consolidated, is a corporation organized and existing under the laws of Connecticut, with its principal place of business in Hartford, Connecticut, and conducts operations as a common carrier of property by motor vehicle in and between points in the States of Massachusetts, Connecticut, Rhode Island, New York, New Jersey, and Pennsylvania.

(e) Horton Motor Lines, Incorporated, hereinafter referred to as Horton, is a corporation organized and existing under the laws of North Carolina, with its principal place of business in Char-

lotte, North Carolina, and conducts operations as a common carrier of property by motor vehicle in and between points in the States of Georgia, on the south, extending northeastward to points in the States of Pennsylvania and New York, on the north, and to and between points in intermediate states.

(f) McCarthy Freight System, Inc., hereinafter referred to as McCarthy, is a corporation organized and existing under the laws of Massachusetts, with its principal place of business in Taunton, Massachusetts, and conducts operations as a common carrier of property by motor vehicle in and between points in the States of Massachusetts, Connecticut, Rhode Island, and New York. McCarthy also operates as a contract carrier of special commodities between points in the States of New Jersey, New York, Connecticut, Rhode Island, Massachusetts, and New Hampshire.

(g) M. Moran Transportation Lines, Inc., hereinafter called Moran, is a corporation organized and existing under the laws of New York, with its principal place of business in Buffalo, New York, and conducts operations as a common carrier of property by motor vehicle in and between points in the States of New York, Pennsylvania, and Ohio.

(h) Southeastern Motor Lines, Incorporated, hereinafter referred to as Southeastern, is a corporation organized and existing under the laws of Virginia, with its principal place of business in Bristol, Virginia, and conducts operations as a common carrier of property by motor vehicle in and between points in the States of Tennessee and North Carolina, on the south, extending northeastward to and between points in the States of New York and Pennsylvania, on the north, and to and between points in intermediate states.

(i) Transportation, Incorporated, hereinafter referred to as Transportation, is a corporation organized and existing under the laws of Georgia, and conducts operations as a common carrier of property by motor vehicle in and between points in the States of Tennessee, North Carolina, South Carolina, Georgia, Alabama, Louisiana, and Florida.

(j) The Transport Company is a corporation organized and existing under the laws of Delaware, with its principal office in New York, New York, which corporation at the time of the filing of the application herein and the hearings thereon had an option to purchase all of the outstanding stock of Arrow Carrier Corporation.

(k) Kuhn, Loeb & Company, a partnership, investment bankers, with their principal place of business in New York, New York, controls the Transport Company through ownership of all of its outstanding stock and is now and for many years last past

has been, banker for the Pennsylvania Railroad Company and the Baltimore and Ohio Railroad Company which operate in the area of the motor carriers herein proposed to be merged.

(l) Barnwell Warehouse & Brokerage Company is a corporation organized and existing under the laws of North Carolina, with its principal place of business at Burlington, North Carolina, and conducts a warehousing, terminal storage business.

(m) Brown Equipment & Manufacturing Company is a corporation organized and existing under the laws of North Carolina, with its principal place of business at Charlotte, North Carolina, and manufactures equipment for Horton.

(n) Conger Realty Company is a corporation organized and existing under the laws of North Carolina, with its principal place of business in Charlotte, North Carolina, and constructs, owns, and maintains certain warehouse and terminal facilities used by Horton.

(o) Southern New England Terminals, Inc., is a corporation organized and existing under the laws of Massachusetts, with its principal place of business in Taunton, Massachusetts, and owns and leases terminal facilities in various states to McCarthy.

#### IV

On July 25, 1941, defendant Associated Transport, Inc., filed the aforesaid application with the Commission in proceedings entitled Docket No. MC-F-1612, Associated Transport, Inc.—Control and Consolidation—Arrow Carrier Corporation, et al., and Docket No. MC-F-1613, Associated Transport, Inc.—Issuance of Securities, seeking authority under Section 5, Interstate Commerce Act, (1) to acquire control, through purchase of capital stock, of the aforesaid eight corporations, to-wit, Arrow, Barnwell, Consolidated, Horton, McCarthy, Moran, Southeastern, and Transportation, and (2) to merge into itself the operating rights and properties of these corporations within one year from date of acquisition of control. By separate application concurrently filed, as amended, defendant Associated Transport, Inc., sought authority under Section 214 of the act to issue preferred and common stock to enable it to acquire control of the above-mentioned companies, and the aforesaid four associated non-carrier companies, to provide funds for working capital and other corporate purposes, and for conversion from time to time of the preferred stock proposed to be issued. That the aforesaid motor carriers operate over 37,884 miles of public highways in nineteen (19) States. That, eliminating duplicate rights, the one company, defendant Associated Transport, Inc., would have operating

rights over 24,338 miles of public highways extending along the Atlantic seaboard from the Canadian border to the Gulf of Mexico.

## V

That on March 16, 1942, the Commission entered its report and final order, a copy of which is hereto attached and marked Exhibit A, and made a part of this complaint, authorizing and approving the proposed merger and transactions for which authority was sought as set forth in paragraph IV of this complaint, subject to certain conditions, pursuant to which defendant Associated Transport, Inc., is authorized to merge said motor carriers throughout this vast area. Following the entry of said order, petitions for rehearing, reargument and reconsideration were duly filed by the Antitrust Division of the Department of Justice, the Secretary of Agriculture, American Farm Bureau Federation, the National Grange, Virginia State Horticultural Society, Inc., West Virginia State Horticultural Society, Maryland State Horticultural Society, Berks-Lehigh Mountain Fruit Growers, Inc., and Appalachian Apple Service, Inc., which petitions were denied by order of the Commission entered April 22, 1942, a copy of which order is hereto attached, marked Exhibit B.

## 6

## VI

That the operations and business of plaintiff is competitive with the operations and business of certain of the aforesaid common carriers by motor vehicle to be merged into defendant Associated Transport, Inc.; that plaintiff's operations and business will sustain irreparable injury, loss, and damage if the existing order of the Interstate Commerce Commission, Exhibit A herein, is allowed to become effective and the transactions therein authorized are consummated, for which it has no adequate remedy at law; and as grounds for granting the relief herein sought, plaintiff alleges and shows, in addition to the facts above, the following:

(a) That the merger of the defendant common carriers into defendant Associated Transport, Inc., will result in the control of tremendous volumes of freight in the management of defendant, Associated Transport, Inc., and that defendant, Associated Transport, Inc., will be able to demand, and will demand, that common carriers operating locally in the States served by plaintiff, McLean Trucking Company, Inc., and with whom traffic is presently handled jointly by these carriers and McLean Trucking Company, Inc., interchange their higher-rated freight, or all of their freight with defendant, Associated Transport, Inc., to the exclusion of

plaintiff, McLean Trucking Company, Inc., with resulting pecuniary loss to the plaintiff;

(b) That defendant, Associated Transport, Inc., as a result of its control of interchange traffic, its influence and control over connecting feeder and delivery lines, the widespread character of its operations extending throughout nineteen (19) States, and through its great financial resources, will:

(1) secure effective control and domination of rate-making procedure to the extent and with the effect of preventing free and independent action on the part of plaintiff McLean Trucking Company, Inc., and other competing carriers in establishing, changing, and publishing of reasonable competitive rates and charges for transportation services; and

(2) will have the power and will temporarily reduce its rates and charges for transportation services on commodities carried and between points served by plaintiff McLean Trucking Company, Inc., and other carriers providing similar transportation services, for the purpose of driving McLean Trucking Company, Inc., and other carriers out of business, thus depriving plaintiff and other carriers of traffic and revenues necessary for its and their continued successful operation.

(c) That plaintiff, McLean Trucking Company, Inc., serves certain points and places through interchange with other common carriers; that to many of these points and places certain of defendant motor carriers have the only adequate and direct services and facilities; that plaintiff McLean Trucking Company, Inc., will of necessity be compelled to interchange traffic originating at or destined to these points and places over routes to be operated by defendant Associated Transport, Inc.; and that as a result of the merger of such carriers into defendant Associated Transport, Inc., said defendant, Associated Transport, Inc., will discover the names of consignors and consignees, and the points of origin and destination of their shipments now known only to the individual carriers, and will thus be able to and will solicit and secure their traffic for movement wholly by defendant Associated Transport, Inc., to the total exclusion from participation therein by plaintiff McLean Trucking Company, Inc., to the pecuniary loss of said plaintiff McLean Trucking Company, Inc.

## VII

(a) That the construction and interpretation of the Interstate Commerce Act as made by the Commission in approving the application of defendant Associated Transport, Inc., is unsound in principle, unsupported by the facts, capricious, arbitrary, and contrary to the letter and spirit of said Act.

(b) That the order of the Commission is not supported by the findings.

(c) That the findings in the report of the Commission are not supported by substantial evidence.

(d) That in its interpretation of Section 5 of the Interstate Commerce Act, as set forth at pages 17 and 18 of the Commission's report, Exhibit A herein, the Commission adopts erroneous criteria for the approval of mergers and unifications of motor carriers subject to its jurisdiction which will result in restraint of competition.

8 (e) That the Commission erred in failing to properly apply the proviso of Section 5 (2) (b) to the transactions here involved and that it failed to require of applicant due proof that the merger will be consistent with the public interest and will enable the railroads with which applicant will be affiliated to use the service of the merged motor carrier lines to public advantage in the railroads' operations and will not unduly restrain competi-

(f) That the Commission erred in failing to find, as required by law and the evidence, that the substantial stock interest of Kuhn, Loeb & Company, bankers for two of the largest railroads operating in the territory of the motor carriers proposed to be merged, is not consistent with public interest.

(g) That the Commission erred in finding, contrary to law and the evidence, that if the proposed transactions are consummated, there would remain ample competitive motor carrier service throughout the territory involved.

(h) That the Commission erred in failing to find, as required by law and the evidence, that no effective motor carrier competition will exist for the consolidated operations of defendant Associated Transport, Inc., authorized to be conducted in the Commission's order hereto attached, marked Exhibit A.

(i) That the Commission erred in denying the petition for rehearing, reargument, and reconsideration of its final order, Exhibit A herein.

## VIII

That if the said order of the Commission, Exhibit A herein, is permitted to become effective, plaintiff will sustain further irreparable injury and damage for which it has no adequate remedy at law, because of

(a) The control which defendant Associated Transport, Inc., will have over freight to be transported by common carriers by motor vehicle along the Atlantic seaboard:

(b) The control of interchange of the aforesaid freight with other carriers;

(c) The control of rates, rules, and practices with relation thereto;

(d) The strong financial backing of investment banking houses of defendant, Associated Transport, Inc.

That this will so adversely affect the operations and business of plaintiff that it as a small motor carrier for hire cannot long survive.

9 WHEREFORE, plaintiff prays the court:

First, that a decree be entered annulling and setting aside the existing order of the Interstate Commerce Commission, Exhibit A herein;

Second, that by such decree the corporate defendants, their officers and agents, be perpetually enjoined and restrained from merging or attempting to merge said corporations pursuant to authority granted in said order, Exhibit A herein;

Third, that plaintiff have such other and further relief in the premises as the nature of the case shall require and to this court shall seem meet.

E. B. Ussery, *Washington, D. C.*

DAVIES, AUERBACK, CONNELL & HARDY,

*Attorneys for McLean Trucking Company, Inc.,*

*Address, One Wall Street, New York, N. Y.*

CHARLES V. GUTHRIE,

ORRIN J. JUDD,

*Of Counsel.*

[*Duly sworn to by Malcolm P. McLean, Jr., jurat omitted in printing.*]

10

## EXHIBIT A

Interstate Commerce Commission

No. MC-F-1612<sup>1</sup>

Associated Transport, Inc.—Control and Consolidation—Arrow Carrier Corporation, et al.

Submitted February 26, 1942. Decided March 16, 1942

1. Acquisition by Associated Transport, Inc., of control of Arrow Carrier Corporation, Barnwell Brothers, Incorporated, Consolidated Motor Lines Incorporated, Horton Motor Lines, Incorporated, McCarthy Freight System, Inc., M. Moran Transportation Lines, Inc., Southeastern Motor Lines, Incorporated, and Transportation, Incorporated, through purchase of capital

<sup>1</sup> This report also embraces No. MC-F-1613, Associated Transport, Inc.—Issuance of Securities.

stock, and consolidation into Associated Transport, Inc., of the operating rights and properties of such carriers, for ownership, management, and operation, approved and authorized, subject to conditions.

2. Issuance by Associated Transport, Inc., of not exceeding 54,049 shares of preferred stock, having par value of \$100 per share, and 931,891 shares of common stock, without par or stated value, for replacement of outstanding common stock, for consummating the transaction, and for other corporate purposes, approved and authorized, subject to conditions.

Claude A. Cochran, Hugh M. Joseloff, and Mortimer A. Sullivan for applicant.

Joseph C. O'Mahoney and Henrik Shipstead for themselves.

Thurman Arnold, Charles B. Bowling, Fred Brenckman, Smith R. Brittingham, Jr., John S. Burchmore, W. G. Burnette, W. S. Campfield, Frank Coleman, Joseph W. Connolly, John B. Dempsey, Haskell Donoho, Charles J. Fagg, James A. Glenn, Edward F. Lacey, J. D. Lawson, James D. Mann, David G. Macdonald, Carroll W. Miller, John M. Miller, L. E. Newcomer, Thomas P. O'Brien, L. F. Orr, W. H. Ott, Jr., Joseph A. Padway, William A. Roberts, Floyd F. Shields, Herbert S. Thatcher, Fred A. Tobin, Mastin G. White, Arne C. Wiprud, and Warren Woods for interveners.

Leonard D. Adkins for Kuhn, Loeb & Company.

#### REPORT OF THE COMMISSION

##### BY THE COMMISSION:

Exceptions were filed to the examiner's proposed report by the Secretary of Agriculture, the Antitrust Division of the Department of Justice, herein called the Antitrust Division, The National Grange, the National Industrial Traffic League, and Super Service Motor Freight Company. Applicant replied, and the matter was orally argued before us.

11 By application filed July 25, 1941, Associated Transport, Inc., New York, N. Y., seeks authority under section 5, Interstate Commerce Act, (1) to acquire control, through purchase of capital stock, of eight corporations, viz:

Arrow Carrier Corporation, Paterson, N. J.  
 Barnwell Brothers, Incorporated, Burlington, N. C.  
 Consolidated Motor Lines Incorporated, Hartford, Conn.  
 Horton Motor Lines, Incorporated, Charlotte, N. C.  
 McCarthy Freight System, Inc., Taunton, Mass.  
 M. Moran Transportation Lines, Inc., Buffalo, N. Y.  
 Southeastern Motor Lines, Incorporated, Bristol, Va.  
 Transportation, Incorporated, Atlanta, Ga.

and (2) to consolidate into itself the operating rights and properties of these corporations<sup>2</sup> within one year from date of acquisition of control. By separate application concurrently filed, as amended, Associated Transport, Inc., seeks authority under section 214 of the act to issue 54,049 shares of preferred and 880,311 shares of common stock, having par value of \$100 and \$1 per share, respectively, to enable it to acquire control of the above-mentioned companies and four associated noncarrier companies,<sup>3</sup> to provide funds for working capital and other corporate purposes, and for conversion from time to time of the preferred stock proposed to be issued.

The applications were heard on a consolidated record, and briefs were filed. Granting of the authority requested is opposed by The Secretary of Agriculture, the Antitrust Division, the National Grange, four fruit-growers' associations, and, in part, by Super Service Motor Freight Company, a motor carrier. A number of other motor carriers, shippers, shipper organizations, the Lynchburg, Va., Chamber of Commerce, and The International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America also intervened but, excepting the last-named organization, which supports the applications, took no definite position thereon. Evidence was introduced by the Antitrust Division and certain motor carriers.

Applicant, a Delaware corporation, was organized March 5, 1941, primarily for the purpose of effectuating the transactions proposed, and is not presently engaged in any business. It is authorized by its charter to issue 100,000 shares of \$100-par-value preferred stock, and 1,000,000 shares of \$1-par-value common stock. It has issued, and there are presently outstanding, 71,480 shares of common stock, the largest single stockholder being B. M. Seymour, its president, who owns 31,240 shares. The remainder of the outstanding stock is held by stockholders of the corporations of which applicant is proposing to acquire control. With the exception hereinafter mentioned, all of the outstanding stock was subscribed and paid for at par to provide funds for organization expenses and for prosecution of the instant applications. The subscribers have agreed that they will not sell, or otherwise

<sup>2</sup> These corporations will hereinafter be referred to as Arrow, Barnwell, Consolidated, Horton, McCarthy, Moran, Southeastern, and Transportation, respectively, and collectively as the carriers involved.

<sup>3</sup> The associated noncarrier companies involved are Barnwell Warehouse & Brokerage Company, Brown Equipment & Manufacturing Company, Conger Realty Company, and Southern New England Terminals, Inc., herein called Barnwell Warehouse, Brown, Conger, and Southern Terminals, respectively. Barnwell Warehouse is an associated company of Barnwell, Brown and Conger of Horton, and Southern Terminals of McCarthy. Consolidated has three subsidiary companies, whose organization and operations are described in Appendix A of our report in Transport Co.—Control—Arrow Carrier Corp., 36 M. C. C. 61, herein called the Transport Co. case. Only one of such subsidiaries, United-Arbour Express, Inc., herein called United-Arbour, is a motor carrier.

dispose of such stock for a period of 30 months from June 11, 1941, subject to certain exceptions in the case of all subscribers except Seymour.\* Applicant delivered 9,000 shares of its common stock to The Transport Company, of New York City; for engineering and accounting data with respect to the companies involved, which data were developed by The Transport Company in connection with proceedings described in the Transport Co. case. The Transport Company is controlled, through ownership of all its outstanding stock, by Kuhn, Loeb & Company, investment bankers of New York City.

Applicant's board of directors consists of nine persons, seven of whom are officers of the respective carriers involved.

13 One member represents The Transport Company, which has contracted to sell Arrow's stock, and the ninth member is Seymour. H. D. Horton, who owns all outstanding stock of Horton, is chairman of the board.

Applicant's balance sheet as of June 30, 1941, shows assets aggregating \$60,202, consisting of: Cash \$36,446, notes receivable \$15,620, and organization expenses \$8,136. Liabilities were: Capital stock \$60,202. Since the date of that balance sheet, applicant has issued 11,278 shares of common stock.

A general description of the organization and operations of each of the carrier and noncarrier companies involved in these applications, except applicant, is contained in Appendix A of the Transport Co. case, and the authority under which they operate is summarized in Appendix D of this report. The carriers operate principally as motor-vehicle common carriers of general commodities, over a network of regular routes, and together serve the principal points in Massachusetts, Rhode Island, Connecticut, New York, Eastern Pennsylvania, New Jersey, Delaware, Maryland, the District of Columbia, Virginia, and North Carolina. Their routes also extend from points in such area to Cleveland, Ohio, Pittsburgh, Pa., Nashville and Chattanooga, Tenn., Great Falls and McColl, S. C., and to New Orleans, La., and Pensacola, Fla., via Atlanta, Ga., and Montgomery, Ala., and pass through northeastern West Virginia. They operate approximately 3,300 units of revenue equipment, and the total highway miles covered by the regular routes of the respective carriers is 37,884. Certain of such carriers also operate over irregular routes in the same general territory covered by their regular-route operations, and McCarthy conducts certain contract-carrier operations. From

\* A subscriber other than Seymour may transfer all or part of his stock to one or more officers or employees of the company herein involved, excluding applicant, of which he is presently a stockholder, provided that only one transfer of each share of stock may be made, and no transfer may be made for any consideration greater than \$1 per share.

October 11, 1940, to December 31, 1941, Arrow's operations were conducted by The Transport Company under a lease of the former's operating rights and properties, at a rental equal to the net earnings derived from the operations, subject to certain adjustments.

Balance-sheet statements of the companies involved, as of April 30, 1941, are shown in Appendix A. A statement showing, to the extent available, their revenues and net income, before and after income taxes, for the years 1932 to 1940, inclusive; and the four-month periods ended April 30, 1940 and 1941, respectively, appears in Appendix B. In order that the result of operations by Arrow and its lessee may be presented on a basis comparable to that of the other carriers, financial data herein contained respecting Arrow disregards the existence of the aforementioned lease and treats the revenues and expenses of lessee, accruing during the period of the lease, as revenues and expenses of Arrow, whereas, technically, only the net income would be reflected on the latter's books.

#### TERMS OF PROPOSED TRANSACTIONS

Under separate agreements entered into between it and the stockholders<sup>5</sup> of the carrier and noncarrier companies involved, applicant would acquire all outstanding stock of each of those companies with the exception of Arrow and Horton. With respect to Arrow, applicant would acquire all of its common and 1,120 of 1,380 shares outstanding, of its preferred stock. Such preferred stock, having a par value of \$100 per share, is redeemable at \$106 per share plus accrued dividends, and that portion not purchased by applicant would be called for redemption either prior to or shortly after completion of the purchase. In addition to the common stock outstanding, all of which would be acquired by applicant, Horton has issued 2,666 shares of \$20-par-value employees preferred stock and has received subscriptions for 276 additional shares of such stock. The employees preferred stock, which is redeemable at par plus accrued dividends, would be called for redemption prior to consummation of the proposed transaction.

<sup>5</sup> The agreement respecting Arrow's stock was entered into with The Transport Company. The latter does not presently own the common stock which it undertook to sell to applicant, but under agreement with Arrow's common stockholders described in the Transport Co. case, which agreement has been amended subsequently in certain respects not here important, it had, in effect, an option to purchase such stock. We were apprised during the course of oral argument that the option has now expired and that there is some doubt whether The Transport Company will be in a position to deliver Arrow's stock to applicant as agreed. In the event the parties are unable to include Arrow in the consolidation as herein authorized, the transaction may nevertheless be consummated in other respects pursuant to our order herein and without necessity for further or modified authority.

Contracts respecting acquisition of the stock of the respective companies are substantially uniform. The contracting stockholders of each company would exchange their stock in such company for capital stock of applicant in an amount determined as follows: Preferred stock having a par value equal to 80 percent of the net worth, as of April 30, 1941, of the particular company involved, exclusive of any increase therein resulting from application of lower depreciation rates, as hereinafter mentioned; and common stock of a par value equal to an amount obtained by deducting from the company's net profit for the year ended April 30, 1941, a sum equal to 6 percent of the par value of the preferred stock received, and dividing the remainder by two. Fractional shares of one-half or more would entitle the parties to a full share, and a fractional share of less than one-half would be disregarded.

Net worth and net profit of a company for the purposes of the agreement were determined in accordance with formulae prescribed therein. Balance-sheet and income statement of the companies for the date and period indicated, prepared in accordance with our rules, were audited and adjusted pursuant to such formulae by a public accounting firm. The principal adjustments made were as follows: Intangible property items were eliminated; provision for income taxes was made on the basis of 1940 rates; tires on equipment at the beginning and end of the stated period were computed at 50 percent of cost; in computing net worth and net profit, fixed rates of depreciation were applied; reserves for uncollectible freight accounts receivable were established on a uniform basis; and the amount of certain expenditures specifically set forth in the respective contracts, which were made during the applicable period and were represented as being of a nonrecurring nature, less provision for income taxes, were added to the adjusted net profit of the respective companies. The total of such expenditures, after deduction for income taxes, applicable to each of the companies is set forth in the margin.<sup>7</sup> Deductions were also made from the net worth of Arrow and Horton in amounts equal to the call price, excluding accrued dividends, of the preferred stock of those companies which would not be acquired by applicant. A further reduction of \$12,000 was made in Arrow's net worth by reason of a payment to be made by it in that

<sup>7</sup> If applicant of such depreciation rates resulted in increasing the value of a company's tangible property, such increase would not entitle the vendor stockholders to additional preferred stock of applicant, but in lieu thereof they would receive common stock having a par value equal to 4 percent of the amount of increase.

<sup>8</sup> Arrow, \$30,556; Barnwell, \$6,073; Barnwell Warehouse, none; Brown, \$1,072; Conger, none; Consolidated, \$25,003; Horton, \$35,925; McCarthy, \$7,976; Moran, none; Southeastern, \$8,643; Southern Terminals, \$2,505; Transportation, none; total, \$117,753.

amount for cancellation of the liability of Arrow under an employment agreement with one of its officers. Consolidated's net worth was reduced by \$36,000, representing an expenditure made by it subsequent to April 30, 1941, for acquisition of 90 shares of its outstanding capital stock. Schedules showing the nature of all adjustments made are contained in the record. The net worth and net income of each of the companies involved for the date and period applicable, as reflected in their accounts and as adjusted for the purposes of determining the consideration, are shown in Appendix C of this report. That appendix also shows the amount of preferred and common stock which applicant would be obligated to issue in order to consummate the transactions.

In determining the consideration, exceptions were made in the following instances: (1) In the case of Barnwell Warehouse, a departure from the general provisions was made necessary because Barnwell Warehouse, in addition to other assets, owns a substantial portion of Barawell's stock and would receive therefor 1,107 shares of applicant's preferred and 15,472 shares of its common stock. The consideration for the stock of Barnwell Warehouse was fixed at 1,222 shares of preferred and 16,876 shares of common stock. As applicant, in acquiring control of Barnwell Warehouse, would, in effect, reacquire the stock received by that corporation, the net consideration for other assets of that company would be 115 shares of applicant's preferred and 1,404 shares of its common stock. (2) The stockholders of Moran would be entitled to 29,000 shares of applicant's common stock in addition to that deliverable under the general provisions of the contract. (3) No adjustments were made with respect to depreciation on Southeastern's revenue equipment, and, in lieu thereof, the contract provides for delivery to its stockholders of 2,000 additional shares of applicant's common stock. (4) The consideration for the stock of Transportation, which company's financial statements show deficits in net worth and income, was fixed at 5,335 shares of applicant's common stock.

17 The selling stockholders in each instance agreed to purchase at par a prescribed number of shares of applicant's common stock for the purpose of paying expenses in connection with the proposed transactions. This provision of the agreements has been executed.

A number of restrictions are imposed calculated to preserve the assets of the respective companies of which control would be acquired, such as limitations on salaries and allowances, expenditures out of the ordinary course of business, declarations of dividends, and disposition of assets. Amendments to the original agreements provide that the respective companies may distribute

by dividends, compensation, expense or otherwise, up to 20 percent of their net earnings for the year ended December 31, 1941, before provision for income taxes.

Upon closing of the transactions, applicant may withhold 15 percent of each class of its stock deliverable to the selling stockholders, to secure it against losses from undisclosed and contingent liabilities and other specified causes. Such stock may be withheld for three years but may be released sooner upon vote of two-thirds of applicant's board of directors. The contracts contemplate closing of the transactions within 10 days after approval by this Commission, but such time may be extended by agreement between applicant and a majority of the persons named as designees of the stockholders in the respective contracts.

Consummation of each contract is conditioned upon our approval of the particular acquisition involved and approval of acquisition of the stock of Barnwell, Consolidated, Horton, McCarthy, and Moran, and is further conditioned upon the Commissioner of Internal Revenue entering into a closing agreement, approved by the Secretary, Undersecretary, or an Assistant Secretary, of the Treasury, declaring that the contemplated transaction constitutes a tax-free reorganization.

As indicated, it is proposed that within one year from the date of acquisition of stock control, applicant shall take over all of the assets and assume all of the liabilities of the carriers involved, and shall become the sole operating company. Decision has not been reached as to whether the separate identities of the noncarrier companies would be maintained. With respect to Brown, tentative conversations have been had with other interests  
18 looking toward ultimate disposal of the company's stock.

#### BENEFITS OF PROPOSED UNIFICATION

Consolidation of these carriers into one unit would present many opportunities for greater economy and efficiency of operation. It would permit of more efficient and greater utilization of equipment, and corresponding reduction in consumption of motor fuel and tires. Many carriers are now finding it difficult to provide adequate equipment to meet the needs of the shipping public. Consolidation of the tonnage of the carriers would result in a higher load factor on vehicles used in over-the-road service, and there would be a large reduction in the number of trucks required for peddler runs and for pick-up and delivery service at terminal points. Extension throughout the proposed system, as planned, of scientific maintenance and safety programs, which the carriers involved have been unable to undertake to the extent which would be possible to applicant with the combined facilities and resources,

would add to the average life of equipment and result in more economical and safe operation and fewer road failures. The experience, and the garage and testing facilities of Consolidated and Horton, would be of material assistance in carrying out such a program. Vehicles could be readily shifted from one part of the system to another to meet peak demands and extraordinary needs, and by reason of that fact less reserve equipment in the aggregate would be required.

The 8 carriers involved presently maintain 179 separate terminals in 129 cities and towns. In one city 6 terminals are located, in another 5; in 11 cities there are 3 each, and in 19 cities 2 each. At some points the terminals would be consolidated and at others there would be a rearrangement of use; for instance, where two terminals are presently located, one might be used as an inbound and the other as an outbound terminal in order to reduce congestion and confusion in handling shipments. Consummation of the proposed transactions would result in substantial economies in terminal expense, and, through more efficient use of facilities, would expedite the movement of traffic. Additional terminals would be established at some points where there is presently insufficient traffic accruing to any one of the carriers to justify its maintaining such facilities. This would be of convenience to shippers in those localities. Some of the carriers, particularly Transportation, have been using poor terminal facilities because they have not had sufficient capital or credit to undertake construction of proper terminals, or to interest private capital in such construction. This has materially increased the cost of operation. With the resources available to applicant, it would be able to remedy that situation.

It is proposed to inaugurate through-trailer service between points where sufficient traffic is available to justify such service. This would reduce terminal costs, loss and damage claims, and the time in transit of freight now interchanged by from 6 to 36 hours. The carriers involved presently interchange a substantial amount of freight, between themselves and with other carriers. During the calendar year 1940 at New York City their interchange business amounted to \$997,600.

The Antitrust Division contends that common control or consolidation of these carriers is not necessary in order to obtain the benefits of through-trailer service, and that such service could be rendered by independent carriers through interchange of equipment without physical transfer of lading. While theoretically this may be true, from an operating standpoint there are many obstacles to such arrangements. Carriers are generally reluctant, and may refuse to turn over their equipment to others, particu-

larly when they need all available equipment for their own traffic. A carrier delivering equipment to another can never be sure when it will be returned. Complications arise because of the varying types, sizes, and unit costs of equipment used by the various motor carriers. In instances where equipment is interchanged, there is a tendency on the part of operating personnel of each carrier to deliver inferior equipment to the other. Disputes arise over questions of maintenance and damages incurred. Through move-

20 ments can be coordinated to better advantage and handled more expeditiously under common control, and the instant transactions would result in through movement of much freight which is now being interchanged. The fact that instances where independent motor carriers presently interchange equipment are relatively rare is itself evidence of the difficulties encountered in the making of satisfactory arrangements between them.

The consolidation would result in simplifying relations with shippers and public regulatory bodies. Tracing of shipments and settlement of claims would be facilitated. Congestion at shippers' platforms would be lessened. A reduction in the number of solicitors calling on shippers would result.

In addition to those previously referred to, economies could be effected through the greater purchasing power of applicant and its ability to obtain necessary financing at lower cost. Substantial savings could also be made in general and administrative, insurance, and communication expenses. Using the expenses incurred by the respective carriers for the year ended April 30, 1941, as a basis, it was estimated that economies could be effected as result of the unification in an amount aggregating \$1,600,000 in the expense items shown below. The aggregate expenses of these companies under the same items for the period indicated is also shown.

	Estimated savings	Expenses incurred
Insurance and safety expense	\$275,000	\$1,055,687
Sales, tariff, and advertising expense	150,000	734,893
Equipment maintenance and garage expense	450,000	2,273,442
Terminal expense	550,000	5,305,246
Administrative and general expense	175,000	1,844,916

\* This is the amount estimated as the saving which would be accomplished during the first year of unified operation. It is estimated that the saving in the second year would amount to \$700,000.

It was estimated that \$150,000 would be required for expenses of the central office, and that transportation expense would increase by \$125,000 because of increased cost of gasoline and oil.

21 Such higher cost of gasoline and oil would, of course, be equally applicable to the carriers operated independently.

While not denying that the transactions would result in substantial economies, the Antitrust Division takes the position

that, as no immediate rate reductions are proposed,\* accomplishment of such economies would be of no benefit to the public. Reduction in the cost of transportation service has been recognized by us in numerous decisions as being a matter affecting the public interest. The Supreme Court in *Texas v. United States*, 292 U. S. 522, held that the words "public interest" as used in section 5 have "direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities". Among other things, the act declares it to be the national transportation policy of Congress "to promote safe, adequate, economical and efficient service". Reduction in the cost of transportation service is properly reflected eventually either in lower rates than would otherwise be applied, or in improvements in service, both of which are in the public interest.

The consolidation upon the terms proposed would not result in any increase in aggregate fixed charges. Such charges of this nature as are assumed by applicant should prove less burdensome to it with the combined resources than to the individual carriers involved.

We find:

That the consolidation would result in improved transportation service, that through movement of freight would be simplified and expedited, equipment more efficiently utilized, terminal facilities improved, and handling of shipments reduced, relations with shippers and public regulatory bodies simplified, and safe operation promoted.

That the consolidation would result in substantial operating economies.

That assumption by applicant of the fixed charges of the carriers involved would not be inconsistent with the public interest.

## 22

### EFFECT ON EMPLOYEES

As of April 30, 1941, the carriers involved employed a total of 5,816 persons. Applicant's officers assert that no employees would be dismissed as a result of the transaction, and the evidence shows that motor carriers are presently experiencing difficulty in obtaining sufficient skilled employees. Considering the increasing demand for transportation service and the evident shortage of experienced personnel, consummation of the transaction would not result in any substantial hardship to employees, through dis-

\* Among other things, applicant's brief states that the unification is designed: "To effectuate economies of operation so that present rates may be maintained, lowered or held within reasonable competitive limits in the rapidly rising market of supplies and labor."

placement or otherwise. Any minor detriment to employees would be offset by the advantages which indirectly would accrue to them from the lower operating costs and greater stability of applicant as compared with the respective carriers involved.

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, which we are informed represents between 80 and 85 percent of the employees of the carriers involved, opposed the applications at the hearing and on brief. However, at oral argument it expressed itself as in support of the applications, its change of position being explained as follows:

"Because of the fact that the overwhelming majority of the employees of the companies are members of our organization, and because of the expression by the company of an intention to enter into collective bargaining relationships affording protection to and conferring benefits upon our members and, finally, because of the present conditions in the country, we are satisfied in this case to accept and rely on the testimony of the parties and the Examiner's findings. We are of the opinion that labor will not be adversely affected by the granting of this application but, on the contrary, will be benefited thereby."

We find that consummation of the proposed transaction would not result in substantial injury to the carrier employees affected.

#### DUAL OPERATIONS

In numerous proceedings under section 5, it has been found that a carrier, or carriers, under common control, should not be permitted to transport the same commodities for one shipper as a contract carrier, and for another shipper as a common carrier, from and to the same points or in the same general territory.

See the Transport Co. case, and cases therein cited.

23 McCarthy has applications pending under the "grandfather" clause of section 209 (a), in Nos. MC-59866 and MC-59866 (Sub-No. 1), for a permit covering certain contract-carrier operations. Operations under the first application have been discontinued and its dismissal requested by McCarthy, and it will not be considered further herein. Under the second application McCarthy seeks a permit covering two separate operations, viz.: (1) Transportation of telephone and electrical equipment and supplies between points in Connecticut and Tottenville, N. Y., and (2) transportation of precious metals and supplies, and equipment used in connection therewith, between specified points in Connecticut, Massachusetts, New Jersey, New York, and Rhode Island. The parties have advised of their willingness that Mc-

Carthy cease the operations described under (1), and that its "grandfather" application be amended accordingly, and our findings will be appropriately conditioned. The other operation is a specialized service conducted with armored vehicles and would not be competitive with any of the common-carrier operations here involved. Continuance of such operation after consummation of the proposed transactions appears unobjectionable. However, final determination with respect to this question will be made when action is taken upon pending application for permit under the "grandfather" clause covering operating rights acquired pursuant to 5 M. C. C. 684.

United-Arbour, a wholly owned subsidiary of Consolidated, formerly operated in interstate or foreign commerce as a motor-vehicle contract carrier, and on March 29, 1938, in No. MC-44092, issuance of a permit to it was authorized covering the transportation of "such merchandise as is dealt in by wholesale, retail, and chain grocery and food business houses, and in connection therewith, equipment, materials, and supplies used in the conduct of such business" between all points in an area in Connecticut bounded generally by New London, Torrington, Westport, and Long Island Sound. Consolidated and McCarthy are each authorized to transport the same commodities between many of the points served by United-Arbour. The instant application represents that such operation will be disposed of or discontinued by United-Arbour prior to consummation of the proposed transactions, and at the

24 hearing it was shown that operations by it had actually been discontinued. However, the parties have not requested cancellation of United-Arbour's operating authority; and, our findings will be appropriately conditioned to protect the situation.

We find:

That the authority herein granted for acquisition of control and consolidation of the properties of McCarthy is upon condition that, in the event control is acquired by applicant, McCarthy shall concurrently discontinue contract-carrier operations in interstate or foreign commerce in the transportation of telephone and electrical equipment and supplies, and its application in No. MC-59866 (Sub-No. 1) shall be considered amended to eliminate therefrom all claim to rights to conduct such operations.

That the authority herein granted for acquisition of control and consolidation of the properties of Consolidated is upon condition that, in the event such control is acquired by applicant, the operating authority granted United-Arbour in the order entered March 29, 1938, in No. MC-44092 shall be concurrently cancelled.

## CORPORATE SIMPLIFICATION

Many duplications exist in the operations of the carriers involved. Maintenance of separate corporations under common control, rendering substantially the same service, frequently has been condemned by us as wasteful. Transport Co.—Control—Arrow Carrier Corp., supra, and cases therein cited. Indeed, we would be unwilling to authorize acquisition of control of the carriers involved, if each were to continue its separate existence and duplicating operations under common control. However, such is not the authority herein sought. As previously stated, the instant application seeks authority to consolidate the operating rights and properties of all the carriers within one year after they are brought under common control. The acquisition of control through stock ownership, which would thus continue for not more than one year, is only a step in the consolidation plan. Applicant's officers and directors are of the opinion that such period of time would  
25 be required in order to establish complete consolidation on a sound basis without undue waste of assets and undue expense. Immediate consolidation of all the companies would result in substantial losses through expenses incurred for insurance and licensing, and it is planned to consolidate the properties with due regard to expiration dates of licenses and insurance in force. In order to license equipment most advantageously, some study of the placement of equipment throughout the system will be required. It is also pointed out that some of the carriers involved possess certain rights to operate in intrastate commerce and that applicant proposes to secure State authority for transfer to it of such intrastate operating rights.

Considering the foregoing, it appears that the best interests of the carriers would be served by authorizing the consolidation upon the terms proposed, which contemplate immediate acquisition of control through stock ownership and consolidation of the operating rights and properties within a period of one year thereafter. However, it may be well to emphasize that our findings and order herein authorize consolidation of all these properties upon terms involving prior acquisition of control, and that they are not intended to authorize acquisition of control without consolidation.

We find:

That there are substantial duplications in the operations of the carriers involved and, under such circumstances, continuance of their separate existences and operations under common control would be uneconomical; but that the proposed consolidation, by eliminating the wasteful duplications in operations and facilities, would rectify this situation.

That consolidation of the properties of the carriers involved into applicant upon the terms and conditions proposed, which contemplate acquisition of control through stock ownership as a step in such consolidation, and complete consummation of the consolidation within a period of not more than one year thereafter, would be consistent with the public interest.

26

## COMPETITION

The Antitrust Division, and others opposing the applications, contend that the transactions would unduly restrain competition in the motor-carrier industry. As noted, the sum of the highway miles covered by the regular routes of the respective carriers involved is 37,884. After the consolidation, applicant would operate over 24,338 miles of regular routes, indicating a duplication between the carriers of 13,546 miles. As will hereinafter appear, the actual competition existing between the carriers involved is somewhat less than might be indicated by the duplicate highway mileage, by reason of restrictions in the service they are authorized to render and differences in the nature of the traffic handled.

Undoubtedly, substantial competition exists between certain of the carriers involved, and consummation of the instant transactions would eliminate such competition. However, such fact alone is not controlling. We are unable to agree with the argument of the Antitrust Division that it was the intention of Congress in enacting section 5 that we approve only such transactions as would not result in an "unreasonable" restraint of competition within the meaning of the antitrust laws, regardless of benefits that might result or the adequacy of remaining competition. Under such an interpretation, the provisions of paragraph 11<sup>10</sup> of section 5 would be rendered largely meaningless. In our opinion the Congress intended to place wholly within our judgment the granting or denying of authority for those transactions under section 5. The specific reference to the antitrust laws only emphasizes the Congressional intent that we should be empowered to approve transactions which otherwise would be violative of the antitrust laws, if we are convinced that the public interest would thus be best served. Stated differently, section 5 authorizes us to permit unifications which would, except for such

<sup>10</sup> This paragraph reads, in part:  
*"The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall have full power . . . to carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under State authority; any any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are hereby relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved . . . ."* [Italics supplied.]

approval, result in restraining competition contrary to the anti-trust laws, where the disadvantages of such restraint are overcome by other advantages in the public interest, such as direct betterment in the public service of the carriers or indirect betterment through stabilization of the industry. Determination of the larger question as to whether the proposed unification would be consistent with the public interest involves consideration not only of the competition that would be eliminated, but also of the competition that would remain, and advantages which would result from the unification. The advantages which might reasonably be expected to result are discussed elsewhere in this report. The extent of competition existing between the carriers involved, and the competition afforded by other carriers which would not be affected by the unification, is discussed below. Although there is some territorial overlapping, such discussion, for convenience, will be divided into three parts, dealing respectively with the competitive situation in those portions of the territory here involved embraced within New England; the Middle Atlantic region (composed of New York, Pennsylvania, New Jersey, Delaware, Maryland, West Virginia, and the District of Columbia), and the South. Unless otherwise indicated, the carriers herein referred to are motor-vehicle common carriers of property operating in interstate or foreign commerce.

**New England Region.**—Consolidated and McCarthy are competitive substantially throughout Connecticut, Massachusetts, and Rhode Island. In the southeastern section of Massachusetts, McCarthy is relatively strong and Consolidated relatively weak, while a reverse situation exists in southern Connecticut. Consolidated is the only one of the carriers involved operating between New York City and New England points.

Lists of carriers not involved in the proposed unification which operate<sup>11</sup> in the considered territory show 359 carriers, of which 103 are Class I carriers. A few of the principal competitors are:

*Operating revenues, 1940<sup>12</sup>*

Adley Express Company, Inc., New Haven, Conn.	\$1,750,000
Seaboard Freight Lines, Inc., New York, N. Y.	1,725,000
New England Transportation Company, Boston, Mass.	<sup>13</sup> 1,575,000
M & M Transportation Company, Somerville, Mass.	1,460,000
Stone's Express, Inc., Lynn, Mass.	1,468,000

<sup>11</sup> While the evidence clearly shows that many of the carriers included in the lists are actually operating at the present time, applicant's witnesses could not testify from personal knowledge that every one was operating. However, as reflected by our records, all carriers included are authorized to operate in the territory and between the points hereinafter indicated. With respect to Class I carriers, each filed an annual report with us disclosing operations during the year 1940, and it may be assumed that operations are still being conducted by them. The lists do not purport to show all of the carriers authorized to operate in the territory.

<sup>12</sup> The amounts shown are round figures. Information is not available to show the portion of the operating revenues of any carrier derived from operations in a particular area or between certain points.

<sup>13</sup> This figure represents revenues from freight operations; in addition, this carrier derived \$1,170,000 from passenger operations.

Adley Express Company, Inc., is authorized to operate as a common carrier of general commodities over a network of regular routes blanketing the States of Connecticut, Massachusetts, and Rhode Island and extending therefrom to Albany and New York, N. Y., and Philadelphia, Pa. It can serve every point in the New England territory served by Consolidated and McCarthy. New England Transportation Company, which is controlled by the New York, New Haven, and Hartford Railroad Company (Howard S. Palmer, James L. Loomis, and Henry B. Sawyer, trustees), has almost equal coverage in such territory, its routes extending therefrom to New York City and Poughkeepsie, N. Y. Its operations as a common carrier of general commodities are described in detail in New England Transp. Co., Common Carrier

Application, 12 M. C. C. 461. Seaboard Freight Lines, Inc., 29 a subsidiary of Keeshin Freight Lines, Inc., conducts operations of the same character over a network of regular routes extending to Syracuse, N. Y., on the west, Fitchburg and Boston, Mass., on the north and east, and Washington, D. C., on the south, with service to intermediate and numerous off-route points, including most of the principal points in the region under consideration. The operations of M & M Transportation Company and Stone's Express, Inc., are not so extensive as those just mentioned, but each of these carriers furnishes substantial competition in the considered territory. The former operates as a common carrier of general commodities between Boston, on the one hand, and Philadelphia, Pa., and Hudson, N. Y., on the other, serving, among other points, New York City, Springfield, Mass., Hartford, New Haven, and Bridgeport, Conn., points within 20 miles of Worcester, Mass., those within 30 miles of Providence, R. I., and those within 35 miles of Boston. It possesses additional authority to transport certain special commodities, including packing-house products from Boston to Baltimore, Md. Stone's Express, Inc., transports general commodities over regular routes between Boston and New York and between certain Massachusetts points, and over irregular routes between points in eastern Massachusetts.

One of the exhibits introduced in evidence analyzes the competition afforded by 294 carriers not involved in the proposed transactions, including 84 Class I carriers, over direct routes between numerous points in the territory in which Consolidated and McCarthy operate, 269 combinations of points being considered. Such exhibit excluded from consideration services rendered over irregular routes, or in the transportation of special commodities only, or general-commodity service through a combination of two or more carriers. The 25 combinations of points shown below

have been selected as representative of the 269 treated in the exhibit. Opposite each combination is shown the number of Class I carriers, of the 84 treated, which are authorized to afford competitive service between the points indicated:

Between	Class I Carriers
Albany, N. Y., and—	
Boston, Mass.	6
New Bedford, Mass.	2
New Haven, Conn.	3
New London, Conn.	3
Providence, R. I.	3
Springfield, Mass.	6
Boston, Mass., and—	
Amesbury, Mass.	8
Bridgeport, Conn.	22
Hartford, Conn.	25
New Haven, Conn.	25
New London, Conn.	13
North Adams, Mass.	7
Providence, R. I.	32
Springfield, Mass.	32
Torrington, Conn.	6
New Haven Conn., and—	
Fitchburg, Mass.	8
North Adams, Mass.	5
Providence, R. I.	18
New London, Conn., and—	
Fitchburg, Mass.	4
Greenfield, Mass.	3
Springfield, Mass.	4
Providence, R. I., and—	
Danbury, Conn.	5
North Adams, Mass.	3
Springfield, Mass., and—	
Bridgeport, Conn.	21
Brockton, Mass.	10

Another exhibit analyzes the competition afforded by 76 general-commodity carriers, including 39 Class I carriers, between various points in the considered New England territory, on the one hand, and New York City, Jersey City, and Newark, N. J., and Philadelphia, Pa., on the other. Among other combinations treated, it is shown that of the 39 Class I carriers considered, 28 operate between Boston and New York City, and 8 operate between Boston and Philadelphia.

The operating revenues in 1940 of 107 Class I motor carriers of property reporting to us, whose principal operations are in the New England region (composed of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), totalled \$40,082,627.<sup>14</sup> The revenues of Consolidated and McCarthy aggregated \$6,467,173 in 1940.

<sup>14</sup> Source of data, pursuant to stipulation of the parties. Revenues, Expenses, and Statistics of Class I Motor Carriers of Property, Statement No. Q-800, Year 1940, Interstate Commerce Commission, Bureau of Statistics. This compilation contains the following statement: "The total annual revenues of Class I carriers of property are probably less than half of the grand total for all motor carriers of property whose rates and service are subject to the jurisdiction of the Interstate Commerce Commission."

**Middle Atlantic Region.**—Consolidated and Moran are competitive between the principal points in New York State. None of the other carriers involved has any operations of importance in that State outside of the metropolitan area of New York City. Moran's routes are considerably more extensive than, and entirely duplicate, Consolidated's routes in this territory, and extend therefrom to Cleveland, Ohio, and to numerous points in northern Pennsylvania not served by any other of the carriers involved. Consolidated and Moran each operates from Binghamton, N. Y., to Philadelphia. Moran also has a direct route from Binghamton through Scranton, Pa., to New York City.

Lists of carriers which operate in the area served by Consolidated and Moran show 205 carriers, of which 60 are Class I carriers. Some of the principal competitors are as follows:

*Operating revenues, \$10*

Akron-Chicago Transportation Co., Inc., Akron, Ohio.....	\$347,000
Interstate Motor Freight System, Detroit, Mich.....	2,907,000
Keoshin Motor Express Co., Inc., Chicago, Ill.....	5,902,000
Niagara Motor Express, Inc., Syracuse, N. Y.....	610,000
Onondaga Freight Corp., Syracuse, N. Y.....	438,000

Akron-Chicago Transportation Co., Inc., operates as a general-commodity common carrier in Illinois, Indiana, Ohio, Pennsylvania, and New York. In New York a network of its routes covers practically all of the State west of Watertown, Utica, and Binghamton. The greater portion of the operations of Interstate Motor Freight System and Keoshin Motor Express Co., Inc., respectively, is in the Central and Middle Western States.

32 Each operates between principal points in New York State but does not serve as wide a territory therein as either Consolidated or Moran. Keoshin Motor Express Co., Inc., connects with its affiliate, Seaboard Freight Lines, Inc., at Syracuse and, in conjunction, the two carriers render through service to New York City and New England points. Niagara Motor Express, Inc., operates entirely within New York State as a general-commodity common carrier over regular routes, principally between Buffalo and Niagara Falls and Albany, via Rochester, Syracuse, and Utica, between Buffalo and Jamestown and Corning, between Rochester and Elmira, and between Syracuse and Binghamton, with service to numerous off-route points in that area. Onondaga Freight Corp. transports general commodities over regular routes extending from Buffalo to Boston, via Rochester, Syracuse, Utica, and Albany, and from Albany to New York, serving all intermediate points. It also has authority to transport a wide variety of specified commodities<sup>15</sup> over irregular routes from and to numerous points in the New York area.

<sup>15</sup> Paper, candles, chemicals, fruits, vegetables, canned and preserved foodstuffs, paint and related commodities, petroleum products in containers, and merchandise dealt in by retail food stores.

Taken from the standpoint of service between representative points in the area in which Consolidated and Moran compete, and considering only those carriers included in the lists referred to, which do not purport to be complete, the following shows the number of Class I carriers not involved in the proposed unification which operate over competitive routes between the points indicated:

<i>Between</i>		<i>Class I Carriers</i>
Albany, N. Y., and—		
Binghamton, N. Y.-----		11
Buffalo, N. Y.-----		18
Elmira, N. Y.-----		14
New York, N. Y.-----		26
Binghamton, N. Y., and—		
Buffalo, N. Y.-----		21
New York, N. Y.-----		20
Syracuse, N. Y.-----		18
Utica, N. Y.-----		13
23 Buffalo, N. Y., and—		
New York, N. Y.-----		20
Philadelphia, Pa.-----		19
Syracuse, N. Y.-----		24
Elmira, N. Y., and—		
Rochester, N. Y.-----		18
Syracuse, N. Y.-----		16
Philadelphia, Pa., and—		
Syracuse, N. Y.-----		17
Utica, N. Y.-----		16

The greater part of the competitive operations of Consolidated and Moran is within New York State, and competition from carriers operating solely in intrastate commerce is of greater importance than in other areas involved. Of Moran's revenues, a large percentage accrues from transportation of freight moving in intrastate commerce. Considerable competition is also afforded on traffic moving in interstate commerce, by carriers which operate physically within New York State, under the exemption from the certificate requirements of the act contained in the second proviso of section 206 (a).

Some competition, although of less relative importance, exists between the carriers involved in portions of the Middle Atlantic region other than New York State. Barnwell, Horton, and Southeastern operate in this territory but are principally concerned with traffic moving between points therein and the South.

Barnwell's routes extend northward to Scranton, Pa., and New York City. On its main route between Washington and New York, via Baltimore and Philadelphia, it is authorized to serve all intermediate and certain off-route points. Service to points on its other routes in this region is generally restricted to traffic originating at or destined to points in Virginia or south thereof. At Harrisburg, Reading, and Allentown, Pa., it is restricted to

delivery of traffic originating at New York. Southeastern's routes also extend to Scranton and New York, but it may not serve any point in this region except on traffic originating at or destined to Roanoka, Va., or points south thereof. Horton's routes extend northward in this area to Pittsburgh, Pa., Scranton, and New York, and it is authorized to serve without restriction Washington, Baltimore, a few other Maryland points, New York City, a number of Pennsylvania points including Philadelphia, Trenton, and New Brunswick, N. J., and points in northern New Jersey in the vicinity of New York City; otherwise, it is generally restricted to traffic moving to or from points south of the Potomac River. Consolidated's routes extend from New York to Philadelphia and Asbury Park and Atlantic City, N. J. With respect to such New Jersey points, it is not competitive with any of the other carriers involved. Arrow operates between the metropolitan area of New York City and numerous points in eastern Pennsylvania, but does not serve Philadelphia. Its routes extend northward to Binghamton, N. Y. Between the latter point and New York City it is in competition with Consolidated and Moran, and certain of its other routes are paralleled by those of Barnwell and Horton. Arrow is primarily concerned with traffic moving between the metropolitan area of New York and Pennsylvania points. It is the only one of the carriers involved having intrastate rights in Pennsylvania. It would be valuable to the unified operation as a feeder and connecting line.

Numerous carriers operate in this territory. An incomplete list of those competing with Arrow shows 148 carriers, of which 44 are Class I carriers. Many of those included in the lists of carriers operating in New York also operate in this area. Some of the carriers whose principal operations are in the area are:

	<i>Operating revenues, 1940</i>
The Davidson Transfer & Storage Co., Baltimore, Md.	\$1,576,000
Horiacher Delivery Service, Inc., Philadelphia, Pa.	1,062,000
Motor Freight Express, Inc., York, Pa.	799,000
Richards Motor Freight Lines, Scranton, Pa.	1,102,000
York Motor Express, York, Pa.	1,302,000

Motor Freight Express operates as a common carrier of general commodities throughout most of the area here under consideration, its routes extending from New York on the north to Pottsville and Harrisburg, Pa., on the west, and Washington on the south. York Motor Express conducts similar operations in the same general territory. Richards Motor Freight Lines conducts operations of the same character over a network of regular routes covering the eastern Pennsylvania points served by the carriers here involved, as well as the principal points served by Moran in New York State. Davidson

transports general commodities over regular routes extending from Washington to New York, via Philadelphia, and over irregular routes between its terminal areas of New York, Philadelphia, Baltimore, and Washington, on the one hand, and, on the other, points in Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, and northern Virginia. Horlacher Delivery Service, Inc., conducts similar operations in the territory extending from Norfolk and Richmond, Va., to New York City. It serves substantially, if not all, points in Delaware and eastern Pennsylvania served by the carriers involved. Other carriers whose principal operations are in this territory and are described in Appendix A of the Transport Co. case are: Branch Motor Express Company, Kirby & Kirby, Inc., The Middlesex Transportation Company, Miller Transport Co., The Motor Haulage Company, Inc., New York and New Brunswick Auto Express Company, Freedman Motor Service, Inc., Pyramid Motor Freight Corporation, Shein's Express, Inc., and Smith and Solomon Trucking Company.

The following shows the number of Class I carriers, of those named in the lists referred to, and not involved in these transactions, which operate over competitive routes between the representative points indicated:

<i>Between</i>		<i>Class I Carriers</i>
New York City and—		
Allentown, Pa.	-----	28
Baltimore, Md.	-----	24
Harrisburg, Pa.	-----	24
Philadelphia, Pa.	-----	29
Scranton, Pa.	-----	24
Sunbury, Pa.	-----	19
Washington, D. C.	-----	22
York, Pa.	-----	21
36 Baltimore, Md., and—		
Harrisburg, Pa.	-----	19
Scranton, Pa.	-----	13

The operating revenues in 1940 of 283 Class I motor carriers of property reporting to us, whose principal operations are in the Middle Atlantic region totalled \$97,449,156. The operating revenues in 1940 of Arrow and Moran, which are the only carriers of those involved whose principal operations are in this region, totalled \$4,282,861.

**Southern Region.**—The carriers involved whose principal operations are in the Southern region are Barnwell, Horton, Southeastern, and Transportation. Because of restrictions in its operating authority, Southeastern is only slightly competitive with any of the other carriers involved. While its routes are generally paralleled by those of Barnwell and Horton north of Roanoke, Va., it may transport only traffic originating at or destined to Roanoke

or points south thereof. Aside from Roanoke, which is served by Barnwell, the only point south thereof on Southeastern's routes served by either Barnwell or Horton is Winston-Salem, N. C., which is served by Southeastern from the west and by Barnwell and Horton from the south and east. Southeastern's routes parallel those of Transportation between Bristol, Va., and Kingsport, and Johnson City, Tenn., 24 and 25 route miles, respectively. Transportation's operations south of Atlanta, Ga., and from points in North and South Carolina to points in Tennessee are not competitive with those of any of the carriers involved. It competes with Horton between Atlanta and Charlotte, N. C. Between Charlotte and Great Falls, S. C., and other points in North Carolina, including Burlington, Greensboro, and Winston-Salem, its operations are competitive with Barnwell and Horton, and it competes with Barnwell between Asheville, N. C., and Charlotte and Winston-Salem. The routes of Barnwell and Horton are generally parallel from Great Falls, S. C., on the south, to New York City and Scranton, on the north. Barnwell's routes between Greensboro, N. C., and Roanoke, Va., and between McColl, S. C., and Wilmington, Del., via Norfolk, Va., and the eastern shore of Maryland are not duplicated by those of any of the other carriers involved.

Lists of carriers operating in this territory, which, as in the case of the other lists referred to, do not purport to be complete, show 289 carriers, of which 67 are Class 1 carriers. These lists include some carriers competing with the southern carriers north of Washington only. Some of the principal competitors are:

	Operating Revenues, \$90
Akers Motor Lines, Inc., Gastonia, N. C.	\$923,000
Atlantic States Motor Lines, Inc., High Point, S. C.	729,000
Brooks Transportation Company, Inc., Richmond, Va.	1,370,000
Harris Brothers Transfer Company, Charlotte, N. C.	518,000
The Mason & Dixon Lines, Inc., Kingsport, Tenn.	1,018,000
Roadway Express, Inc., Akron, Ohio.	2,224,000

Akers Motor Lines, Inc., operates as a common carrier of general commodities over irregular routes. It is authorized to transport such commodities between Gastonia, N. C., and points within 25 miles thereof, on the one hand, and points within 100 miles of Atlanta and 5 other Georgia points, on the other, and between said Georgia points and points in North and South Carolina, on the one hand, and, on the other, all points in New Jersey, Connecticut, Rhode Island, Massachusetts, and the District of Columbia, numerous points in Maryland, Delaware, Pennsylvania, and New York (including New York City); and points within 25 miles of Akron, Ohio. Atlantic States Motor Lines, Inc., conducts similar operations over a network of regular routes extending from Co-

lumbia, S. C., and Atlanta, on the south, and Asheville and Roanoke, on the west, to New York City. It also transports general and special commodities over irregular routes, generally between southern points, on the one hand, and points in the Middle Atlantic States, on the other.

Brooks Transportation Company, Inc., transports general commodities over regular routes, generally parallel to those of Barnwell and Horton, between Winston-Salem and Greensboro, N. C., and Roanoke, Va., on the one hand, and New York City, on the other. Harris Brothers Transfer Company conducts operations of the same character over regular routes between Charlotte and New York over several routes, with service to a number of Pennsylvania points, including Philadelphia. The Mason & Dixon Lines, Inc., competes with most of the operations here involved between Atlanta and New York, its routes extending from Atlanta and Charlotte on the south to Scranton and New York City on the north. Roadway Express, Inc., operates as a common carrier of general commodities in 24 States. So far as concerned here, it operates from Columbus, Ga., to New York City, via Atlanta, Greenville, S. C., Charlotte, Richmond, Baltimore, and Philadelphia. It also conducts irregular-route operations in North and South Carolina. Other carriers whose principal operations are in this territory and are described in Appendix A of the Transport Case are: Hampton Roads Transportation Company, Mundy Motor Lines, Rutherford Freight Lines, Incorporated, Super Service Motor Freight Company, and The Wright Line.

The following shows the number of Class I carriers, of those named in the lists referred to and not involved in the proposed transactions, which operate over competitive routes between representative points in the Southern region, and between points therein and certain points outside of such region. Service is considered only between points served in common by two or more of the carriers involved; i. e., only in those instances where there will be a lessening of competition.

<i>Between</i>		<i>Class I carriers</i>
Asheville, N. C., and—		
Burlington, N. C.	.....	8
Charlotte, N. C.	.....	11
Atlanta, Ga., and—		
Burlington	.....	7
Charlotte	.....	10
Burlington and—		
Great Falls, S. C.	.....	7
Fayetteville, N. C.	.....	14
Charlotte and—		
Harrisburg, Pa.	.....	11
Lynchburg, Va.	.....	13
New York, N. Y.	.....	13

<i>Between</i>		<i>Class I carriers</i>
39	Charlotte and—Continued.	
	Philadelphia, Pa.	13
	Richmond, Va.	17
	Seranton, Pa.	9
	Washington, D. C.	14
	Winchester, Va.	11
	Lynchburg and—	
	New York	8
	Richmond	10
	Washington	9
	Richmond and—	
	Harrisburg	11
	New York	16
	Washington	20
	Romoke and—	
	Harrisburg	7
	New York	8
	Seranton	4
	Washington	10
	Winchester	10

The operating revenues in 1940 of 92 Class I carriers of property reporting to us whose principal operations are in the Southern region (composed of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia) totalled \$49,051,190. The revenues in that year of Barnwell, Horton, Southeastern, and Transportation totalled \$7,955,230.

General.—The foregoing clearly shows that if the proposed transaction is consummated, there would remain ample competitive motor-carrier service throughout the territory involved. In addition, all of the principal points and many others are served by one or more rail carriers. Competition is also afforded by motor-vehicle contract carriers, and by carloading and forwarding companies. The tabulations showing service between representative points include only carriers rendering single-line service, although effective competition frequently is afforded such carriers by combinations of two or more carriers through interchange. Nor do the

tabulations reflect competition of overhead operations. For example, Spector Motor Service, Inc., which operates between many points in the Middle Atlantic and New England regions, on the one hand, to points in the Central States, on the other, is not included in the tabulations although actually operating between many of the points shown.

A detailed analysis, like the foregoing, of remaining competition between representative points in the territory, contained in the proposed report, is characterized by the Antitrust Division as irrelevant in that it relates only to the existing operations of the individual carriers involved and does not discuss motor-carrier competition which would be afforded to the proposed consolidated operation. The evidence introduced by applicant, and the foregoing analysis, are intended to show that, as to those points be-

tween which two or more of the carriers involved operate and between which, therefore, the transaction would result in a lessening of competitive service, adequate competition would remain. As to those points between which only one of the carriers involved operates, it could not well be said that the consolidation would eliminate competition; it would merely result in replacing the present operator with applicant. Much of the argument that the consolidation would result in undue restraint of competition is based on the fact that there would be no other single carrier authorized to operate throughout the territory in which applicant could operate, in particular, between Boston and New Orleans. The evidence shows that service between these extreme termini is not contemplated by applicant, nor would it be economically feasible under present conditions and rate structures, particularly because of the availability of substantially cheaper water transportation. However, assuming such service were to be rendered by applicant, the mere fact that the consolidation would result in making available to the public a new service, different from any presently existing, may not properly be objected to on the ground that applicant would have a "monopoly" of such service. If such contention were

valid we would be required to disapprove many applications both under section 5 and section 207, for extension of operations to points not already enjoying similar service, on the ground that such an applicant, being the only operator, would have a monopoly of such service.

It seems that protestants are more apprehensive as to the possible indirect effect of the consolidation upon remaining competing operators than the direct elimination of competition between the carriers involved. They allege that the consolidation would bring into being the largest common carrier of property by motor vehicle in the United States, which appears to be true at least from the standpoint of revenues, and contend in effect, that applicant, because of its extensive route coverage and large total revenues, would be so dominant in the territory that it would smother competition of remaining independent motor carriers. Experience has not demonstrated that such result would be likely to follow. There are a number of large property motor-carrier systems presently in existence, most of which operate in the Middle Atlantic and Central States, notably the Keeshin system, Interstate Motor Freight System, and U. S. Truck Lines system. There is no indication that anything approaching a monopoly has resulted in that territory from the formation and operation of those systems. Considering the great number of motor carriers presently operating, the small amount of capital required to enter the motor transportation field, and advantages in certain respects which smaller motor carriers

have over larger ones through their more intimate relations with shippers and ability to render a more personalized service, it would seem that monopoly is little to be feared at this stage of the development of the trucking industry. It is not necessarily true that applicant would be able to obtain any greater portion of the available traffic than the carriers involved now handle. As shown by the testimony of shipper representatives, there is a tendency among many shippers to divide traffic among competing lines. In the opinion of the general manager of one of the intervening motor carriers which competes with Barnwell and Horton, his company would be in a better position from a solicitation standpoint if those carriers were merged.

42 It is also argued that the combined volume of business of the carriers involved would give applicant such great bargaining power with connecting motor carriers for interline business that it could secure not only the larger portion of the traffic, but could demand as exchange the premium or higher-rated freight; and that there would be created in applicant a "bottle neck" through which, in many cases, shippers must send their traffic. Each of these contentions is based upon an incorrect premise that applicant would have the only available service between strategic points, and that independent lines would be forced to interchange with it. As has been shown, a carrier would have a choice of several carriers other than applicant with which to make interchange arrangements, and if not treated fairly would, no doubt, favor such other carriers. The bargaining power of applicant would necessarily have to be spread among numerous connecting lines, and in the aggregate would be no more, and probably would be less, than that of competing lines. Applicant would have little to gain and much to lose by adopting an unreasonable policy with respect to interchange, and its officers have expressed their intention of maintaining existing joint-rate and through-route arrangements.

It is also contended that the consolidation would result in diversion of interchange traffic, presently delivered by the carriers involved to other connecting lines, to such an extent as to affect these lines adversely. It is no doubt true that applicant would haul unroute freight to destination, when possible to do so; in other words, it would not short-haul itself. However, the traffic it might divert from connecting carriers probably would be equalized, to a large degree at least, by traffic which would be diverted from it to other lines. To illustrate, a carrier operating between Boston and New York and presently interchanging with Barnwell at the latter point for southern destinations, after consummation of the proposed consolidation, would be likely to de-

liver traffic controlled by it to some independent line rather than to applicant, which would be a competitor of such delivering carrier.

43 The large size of a motor carrier which would result from a unification alone does not constitute sufficient ground for denial of an application. Application of such a policy would tend to freeze the motor-carrier industry at its present level. Such transportation, compared with rail and water transportation, is still in its infancy, and arbitrary restrictions upon its natural development into larger units solely by reason of comparative size would not be in the public interest. There are many thousands of motor carriers of property subject to our jurisdiction. Many of these are very small, and small motor carriers are necessary and have a definite place in the industry. On the other hand, it would seem that larger motor-carrier systems, comparable in size and strength with units of competing forms of transportation, should also have their place in the industry. The legislative history of section 5 indicates a clear Congressional intent to encourage unifications, particularly of railroads. In view of the national transportation policy, as declared in the act, it can not be supposed that Congress intended that the motor-carrier industry, a coordinate and competing form of transportation, should not also be permitted to grow through consolidations, or that the mere size of the consolidated company should, of itself, be sufficient to warrant denial. Considering the much greater number of motor carriers of property and their size as compared with railroads generally, the need for unification in the trucking field is at least as great as in the case of railroads, which have had many years of development and now comprise comparatively few systems.

At the conclusion of the hearing, the Antitrust Division moved that all of the motor-vehicle common carriers of property interchanging freight in the metropolitan area of New York, Baltimore, and Philadelphia, including those lines involved in the proposed unification as well as others, be required to furnish us information showing the tonnage received from and delivered to connecting carriers in New England and New York State for the last six months of 1910. Aside from the doubtful pro-

44 priety of entering such a general order in a proceeding of this nature, and the fact that such order would place a great physical and financial burden upon carriers not parties to this proceeding, it is not believed that such information is essential to a determination of the issues involved. Accordingly, the motion is denied.

**Railroad Relationship.**—Acquisition by applicant of control of Arrow would result in Kuhn, Loeb & Company, through The

Transport Company, obtaining a substantial interest in applicant. Kuhn, Loeb & Company is represented on the boards of directors of several railroads operating outside of the territory here involved, and for many years it has been banker for The Baltimore and Ohio Railroad Company and The Pennsylvania Railroad Company, each of which operates in this territory. There is no allegation that it controls any railroad, but, because of its relationship with railroads, it is contended that possession by Kuhn, Loeb & Company of a financial interest in applicant would be contrary to the public interest, would result in restraining competition between the carriers involved and railroads, and that applicant would be affiliated with a railroad within the meaning of section 5 (6).<sup>16</sup> On behalf of the Secretary of Agriculture, it was stated that he would not have opposed the applications were it not for the participation of Kuhn, Loeb & Company.

Contrary to the contention of protestants, it is clear that Kuhn, Loeb & Company did not sponsor the proposal now under consideration. Agreements were executed respecting all of the other carriers while negotiations respecting acquisition of  
 45 Arrow's stock were under way and before any final agreement thereon had been reached. Consummation of each of the contracts is specifically conditioned upon approval by us of acquisition by applicant of control of Barnwell, Consolidated, Horton, McCarthy, and Moran, but Arrow is not included as one of the essential companies. Indeed, as previously indicated, it may be that the parties will be unable to include Arrow in the transaction as finally consummated.

If the proposed transactions were consummated, Kuhn, Loeb & Company indirectly would own 6,877 shares of applicant's preferred stock and 67,167 shares of its common, which, after issuance of the 15,000 shares of preferred stock proposed to be offered the public, would be 13.00 and 9.53 percent, respectively, of the preferred and common stock outstanding. While no one interest would own a majority of applicant's stock, the Horton interests would more nearly approach control than any other. H. D. Horton, with members of his family, would own 14,917 shares of applicant's preferred stock and 267,873 shares of its common, or 28.18 and 38.01 percent, respectively, of that outstanding. The present stockholders of Consolidated, in the aggregate, would also have

<sup>16</sup> Section 5 (6) reads as follows:

"For the purposes of this section a person shall be held to be affiliated with a carrier if, by reason of the relationship of such person to such carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or any other direct or indirect means), it is reasonable to believe that the affairs of any carrier of which control may be acquired by such person will be managed in the interest of such other carrier."

greater voting power than Kuhn, Loeb & Company. Applicant would not be indebted to it financially, and it would have only one of nine members on applicant's board of directors. Its inexperience in the motor-carrier industry, contrasted with the experience of other directors and principal stockholders of applicant, most of whom are now active heads of the carriers involved, makes it improbable that Kuhn, Loeb & Company would have more than a nominal voice in the formulation of operating policies, and clearly it would not have the power to control applicant. Protestants' allegation does not specify the particular railroad or railroads with which it is believed applicant would be affiliated as a result of the participation of Kuhn, Loeb & Company. It is argued that the fact that no railroads opposed the applications lends support to protestant's contention in this regard. We do

46 not agree that such an inference may properly be drawn merely from the absence of railroad opposition. The circumstances present here are not such as to make it reasonable to believe that the affairs of applicant would be managed in the interest of any railroad, and we conclude that applicant is not and would not be affiliated with a railroad as a result of consummation of these transactions as proposed. Compare Cleveland, Columbus & Cin. Highway, Inc.—Purchase—Reo, 36 M. C. C. 325, and National Freight Lines, Inc.—Purchase—Mason, 15 M. C. C. 687.

One of the reasons advanced in opposition to the applications is that there is nothing to prevent Kuhn, Loeb & Company from subsequently acquiring control of applicant. There is no circumstance here which leads us to believe that such acquisition is contemplated. Certainly, the mere possibility that this might occur at some future time would not warrant denial of the applications. If such reasoning were adopted, no unification would be approved for fear that a different person or persons might obtain control of the unified operation at some future date, which control might be contrary to the public interest. To the extent a future change in control or management of applicant might result in control or management in a common interest with another carrier, whether rail, motor, or water, the provisions of section 5 (4) and our powers under section 5 (7) are ample to protect the situation.

We find:

That the proposed transactions would not result in undue restraint of competition.

That applicant is not, and upon consummation of the transactions as proposed, would not be, affiliated with any railroad.

## ISSUANCE OF SECURITIES

Consummation of the contracts for acquisition of control of the carrier and associated noncarrier companies would require issuance by applicant of 648,643 shares of its common stock and 39,049 shares of its preferred stock, having a total par value of \$4,553,543. Of these shares, 1,107 of preferred and 15,472 of common, issuable to Barnwell Warehouse, would be subsequently cancelled, thus leaving outstanding 37,942 shares of preferred and 633,171 shares of common stock, having a total par value of \$4,427,371. As of April 30, 1941, the aggregate net worth of the corporations involved, according to their books, was \$5,077,992. After making adjustments as provided in the contracts, the aggregate net worth would be \$4,900,243.

Authority is sought by applicant under section 214 to issue (1) stock as set forth above to consummate the contracts for acquisition of control; (2) necessary common stock, from time to time as required, in conversion of its preferred stock, and (3) 15,000 shares of preferred stock, to be offered and sold to the public, the proceeds of which would be used for working capital and other corporate purposes.

Holders of applicant's common and preferred stock would be entitled to one vote for each share held. The preferred stockholders would be entitled to cumulative dividends of 6 percent per annum before any dividends are paid on the common stock and, in the event of liquidation, to \$105 per share plus accumulated dividends before distribution of any amount to common stockholders. At the option of the holders, preferred stock is convertible into common stock, as follows: During the first three years from date of issue, 4 of common for 1 of preferred; during the next three years,  $3\frac{1}{3}$  for 1; and thereafter, 3 for 1. Applicant may redeem the preferred stock within 5 years from date of issue at \$110 per share, and thereafter at \$105 per share, plus accumulated dividends in each instance.

The highest conversion rate provided for is four shares of common for one of preferred. At that rate, to convert all preferred stock proposed to be issued, 54,049 shares, would require 216,196 shares of common stock. However, it is unnecessary to authorize issuance of common stock to convert the preferred stock deliverable to Barnwell Warehouse, which would be subsequently cancelled. Eliminating any amount for such purpose, the maximum number of shares of common stock required for conversion purposes would be 211,768, and the total amount of common stock

for which authority would be required would be 860,411 shares.<sup>17</sup>

48 The 15,000 shares of preferred stock proposed to be offered to the public would be sold at not less than par. No commitment with respect to such sale has been made and no underwriting agreement entered into. It is proposed that any underwriting agreement entered into shall be subject to our approval, and the findings will be conditioned accordingly. Sale at par of such stock would produce \$1,500,000, which would be used to increase working capital, to purchase equipment, and to pay outstanding obligations. As of April 30, 1941, the aggregate current assets of the companies involved were only slightly in excess of the current liabilities. Each of the carriers at present lacks adequate working capital, which is attributable, in part at least, to the recent large increase in their volume of business. The addition of \$1,500,000 to applicant's working capital is necessary to meet its needs for such funds when the consolidation is effected. The annual dividend requirement upon all preferred stock to be issued, excluding that issued to Barnwell Warehouse and subsequently retired, would be \$317,652, which is about 42 percent of the companies' aggregate net income, after provision for income taxes, in 1940, and about 33 percent of such net income for 1939.

Pro forma balance sheet statement of applicant as of June 30, 1941, giving effect to consolidation into itself of the companies involved<sup>18</sup> and to the issuance of proposed securities, and reflecting elimination of all intangible items presently carried on the companies' books, shows assets<sup>19</sup> aggregating \$10,950,946, consisting of: Current assets \$4,263,616, including cash \$1,956,858, working funds \$68,693, accounts receivable, less reserve for uncollectible accounts, \$1,372,332, and material and supplies \$667,172; tangible property, less depreciation, \$5,516,399; organization 49 expense \$107,136;<sup>20</sup> investment securities and advances \$176,204; and deferred debits \$887,591, principally prepayments \$885,528. Liabilities would be: Current liabilities \$2,827,373, chiefly accounts payable \$1,243,959 and taxes accrued \$726,186; advances payable \$127,111; equipment obligations \$867,336; other long-term obligations \$397,406; deferred credits \$62,353; reserves

<sup>17</sup> The section 214 application, as amended, seeks authority to issue 860,411 shares of common stock. Such request is apparently based upon a miscalculation, as the maximum requirement, before elimination of common stock for conversion of preferred stock issuable to Barnwell Warehouse, would be 864,839.

<sup>18</sup> This balance sheet statement includes assets and liabilities for the associated non-carrier companies, in total amount \$1,097,109, as reflected in Appendix A.

<sup>19</sup> For the purpose of this balance sheet, valuation of assets was adjusted in accordance with the contract provisions previously described. The total value would be slightly higher if book values were used. Assets and liabilities of the companies involved are as of April 30, 1941.

<sup>20</sup> Represent \$8,136 expended as of June 30, 1941, \$9,000 for data purchased from The Transport Company, and \$90,000 estimated additional expenditures for prosecution of instant applications and completion of applicant's organization.

\$197,644, including injuries, loss and damage reserves \$75,283, and reserve for income taxes \$108,673; capital stocks—preferred \$5,294,200 and common \$704,651;<sup>21</sup> and unearned surplus \$472,872.

The foregoing reflects a capitalization of \$7,263,593, comprised of capital stock \$5,998,851, and equipment and long-term obligations \$1,264,742. The following assets appear in support of such capitalization:

Cash.....	<sup>22</sup> \$1,956,858
Material and supplies.....	667,172
Tangible property.....	5,516,399
Total.....	8,140,429

The total shown is \$876,836 more than applicant's above-stated capitalization.

The National Industrial Traffic League does not oppose the applications but expresses some doubt whether the proposed method of financing is sound. It is apprehensive that applicant might subsequently increase the recorded value of its capital stock (which, it is represented, is permissible under the laws of Delaware under which applicant was organized), and that such higher recorded value would be relied upon by the public and given weight in future rate proceedings. We have adequate powers under the act to prevent a write-up of applicant's capital stock accounts.<sup>23</sup>

50 It is also argued that applicant's common stock might subsequently find its way into the hands of the public at a price greater than par and, in this connection, the instant proposal is compared to that disapproved in the Transport Co. case. However, in the instant case applicant would assign no value to its common stock, other than par value, and is not proposing to sell any of such stock to the public. Thus, the situation is essentially different from that existing in the Transport Co. case, as illustrated by the following excerpt from our report in that proceeding:

"The par value of the securities would not exceed the value of such [tangible] assets, but we cannot ignore the fact that it is proposed, and it would be necessary in order to finance the transactions, to sell the common stock at prices 20 or more times the par value."

<sup>21</sup> Includes 71,480 shares already issued, of which 11,278 shares of common stock were issued by applicant subsequent to June 30, 1941.

<sup>22</sup> Includes proceeds from sale of \$1,500,000 preferred stock.

<sup>23</sup> Our Uniform System of Accounts for Class I Common and Contract Motor Carriers of Property provides:

"No entries recording changes in the par value of stocks with par value; the stated value of nonpar stocks having a stated value; or the recorded value of nonpar stocks without stated value shall be made in any account for capital stock without approval of the Commission."

Considering the fact that the par value of the common stock was arbitrarily fixed, without regard to actual or book value of the consideration which would be received therefor, and the great difference between the par values of the common stock which would be issuable and the preferred stock which would be retired, respectively, upon conversion of the latter into the former, it is our opinion that applicant's common stock should be without par value. If par-value common stock were issued, as proposed, upon conversion at the highest rate provided, for each share of preferred stock cancelled, par value \$100, 4 shares of common, par value \$4, would be issued. The difference of \$96 presumably would be credited to surplus. Thus, using the foregoing pro forma balance sheet as a basis, if all the preferred stock were converted at that rate, applicant's capital stock account would be reduced from \$5,998,851 to \$916,419. The balance sheet would then create a misleading impression with respect to original investment. Applicant's counsel stated at oral argument that it has no objection to changing its common stock to stock of no par value, and our findings will be conditioned accordingly. In authorizing issuance of these securities, our findings contemplate accounting in

accordance with our Uniform System of Accounts for 31 Class I Common and Contract Motor Carriers of Property, and that, as recorded on the books of applicant after consummation of the consolidation, no allowance shall be reflected for intangible property of the carriers involved.

As noted, applicant has already issued 71,480 shares of par-value common stock and in order to prevent the creation of two classes of common stock, which appears undesirable and contrary to the intent of the parties, the authority herein granted will include authority for applicant to issue 71,480 shares of no-par value common stock to replace the par-value common stock outstanding.

The Antitrust Division contends that the preferred stock to be offered to the public should be sold pursuant to competitive bids. Considering the type of securities involved, the newness of the enterprise, and the unfamiliarity generally of the public with motor carrier securities, there is grave doubt whether marketing of the securities through competitive bids would be feasible. It is believed that the condition imposed, requiring approval by us of any agreement entered into for the disposition of the securities, will adequately protect the situation.

The holder of one share of common stock would have equal voting power with the holder of a share of preferred stock, each being entitled to vote the stock cumulatively. Question arises as to whether the great disparity, from the standpoint of recorded,

value, between the voting rights of the preferred and common stock proposed to be issued would be consistent with the public interest. It has been found that concentration of control of a carrier in the hands of persons having a relatively small investment therein is not always compatible with the public interest.<sup>24</sup> It must be remembered, however, that the recorded value of applicant's common stock would not, and does not purport to, represent the amount of investment, but rather an undivided interest in applicant, undefined in amount, derived from the contribution to applicant, by the persons receiving such stock, of going businesses. It should also be recognized that, in view of the preferential

52 treatment of preferred stockholders, common stockholders are ordinarily entitled to control. Upon the basis of the proposed stock issue, our findings will be conditioned to assure the preferred stockholders of the power to control applicant in the event dividends become in arrears for two consecutive years, such control to continue until the arrears are paid.

Upon consolidation into itself of the companies involved, applicant would be required to assume all of their liabilities. Certain of these companies have outstanding securities with respect to which assumption of obligation by applicant would require our authority under section 214. It is probable that some of these securities will be liquidated prior to actual consolidation. Applicant represents that, within the one-year period prior to consolidation, it will make appropriate application for requisite authority under section 214 to assume obligations with respect to any securities of the companies involved. In authorizing consolidation of these properties, our findings are not to be construed as prejudging any issues which may arise with respect to assumption by applicant of obligation in respect of securities of the liquidating companies within the meaning of section 214.

We find:

That an increase in applicant's working capital of \$1,500,000 is necessary to place it upon a sound financial basis upon effecting the consolidation.

That applicant's capitalization would not be excessive upon consummation of the consolidation upon the terms proposed.

That the authority herein granted for the issuance of securities is upon the following conditions:

(a) Prior to exercise of such authority applicant's articles of incorporation shall be amended (and evidence of such amendment furnished us) so as to provide: (1) That holders of its preferred stock, voting separately as a class, in the event of default in pay-

<sup>24</sup> Compare Consolidated Freight Lines, Inc. — Stock, 5 M. C. C. 749, 755; Unification of Southwestern Lines, 121 I. C. C. 401, 428.

ment of dividends upon such preferred stock for two years or more, and until all dividends in arrears on such stock are paid, shall be entitled at any stockholders' meeting held for that purpose to elect a majority of applicant's board of directors; and (2) that its common stock shall be without par value.

(b) The preferred stock shall not be issued for sale to the public, as proposed, until any agreement or agreements entered into, or proposed to be entered into, by applicant for the sale or underwriting of such stock shall first be submitted to and approved by us.

#### GENERAL

Protestant, Super Service Motor Freight Company, operates as a motor-vehicle common carrier between points in middle and eastern Tennessee and Philadelphia in competition with Southeastern. While it does not oppose the applications generally, it objects to inclusion of Southeastern in the consolidation. It contends that Southeastern has no valid operating rights susceptible of such consolidation. A certificate of public convenience and necessity was issued to Southeastern, in No. MC-60451 (Sub-No. 3), November 4, 1941, authorizing operations between Johnson City, Tenn., and North Wilkesboro, N. C., and between West Jefferson and Winston Salem, N. C.; and in No. MC-60451, on November 29, 1938, issuance of a certificate to Southeastern was authorized, covering operations between Knoxville, Tenn., and New York and Scranton. Protestant alleges that the order of November 29, 1938, in No. MC-60451, was incorrectly entered. Such order is not subject to collateral attack in this proceeding, and so long as it remains in force must be accepted as correctly defining the operating authority granted. Southeastern's operations between Nashville and Knoxville are conducted under application No. MC-60451 (Sub No. 2) pending under the "grandfather" clause of section 206 (a), protestant contending that rights thereunder are not valid because of an interruption in service by a predecessor of Southeastern. We have consistently found that all issues in connection with the validity of claimed rights under pending "grandfather" applications must be reserved for determination in proceedings on such applications, and that principle is applicable to the applications here under consideration. This record shows that Southeastern is conducting the operations under that pending application.

It is also argued that, in view of the nature of its operating rights, the consideration for Southeastern's stock is excessive. Southeastern's net worth, exclusive of intangibles, is

approximately equal to the amount of stock which applicant would issue. A finding that such consideration is unreasonable is not warranted.

In arguing for denial of these applications, protestants have frequently compared the instant transactions with those disapproved in the Transport Co. case. Apart from the fact that the carriers here involved were, with 21 others, involved in that case, there is little similarity between such proposed transactions. In the previous case, substantially all of the consideration for the properties was to be paid in cash, to be obtained from the public; here the stockholders of the carriers are to receive no cash. In the Transport Co. case, large promotional and organizational fees were to be paid; here no fees are to be paid to promoters or organizers. It is true that those participating in the organization have been issued certain common stock for which payment was made at par; but even if it be assumed, as contended, that such stock will have a greater value than its present par, the only effect would be to reduce the value of the remaining common stock issuable under the respective contracts. This is equally true of the 9,000 shares of common stock issued to The Transport Company. The public interest is not concerned with the number of shares into which the parties divide their equity in applicant so long as its capitalization is not excessive. In the prior case, numerous employment agreements at substantial salaries were entered into in contemplation of the proposed unification; here no such employment agree-

55      ments have been made.<sup>25</sup> No question is presented here as to the reasonableness of property appraisals, or capitalization of earnings or intangibles. The fewer number of carriers involved in the instant proposal makes the question of possible restraint of competition less of a factor. The carriers involved in the prior case, but not in the present one, alone would furnish substantial competition to applicant throughout much of the territory involved.

The proposed unification is predominately an end-to-end consolidation of complementary operations. To the extent there is overlapping, the consolidation would result in elimination of duplications, with economies and the release and better use of equipment and terminal space. The unified operation would provide a more complete service in a large area along the eastern

<sup>25</sup> All employment agreements made by the companies here involved in contemplation of the previously-proposed unification have been cancelled with the exception of agreements between Arrow and four of its principal officers and stockholders. Arrow has agreed, if the instant transaction is consummated, to pay one of such persons \$12,000 (which sum was deducted from Arrow's net worth in determining the consideration) for cancellation of the agreement with him. The remaining agreements are with persons who are not directly involved in the instant transaction and who would not secure any of applicant's stock. They are unwilling that their agreements be cancelled, and, in view of the absence of any proprietary interest by them in the enterprise, applicant desires that continued service by them be assured through such employment agreements.

seaboard. It would be of sufficient size to make possible public financing, if subsequently required, and to command reasonable purchasing power in the acquisition of equipment, insurance, and credit. The principal officers of the respective companies would remain with the organization, and local management in the various divisions of the system would be left largely in their hands. Their continued participation and efforts to advance applicant's welfare are assured by their proprietary interest. The fact that these men, practically all of whom have had considerable experience and success in the motor-carrier industry, are willing to transfer control of properties, from which they are deriving good earnings, without receiving immediate monetary consideration, itself speaks well for the chances of success of the enterprise. Many of them have had experience in unifying motor-carrier operations on a smaller scale and are conversant with the economies and advantages to be derived therefrom.

The benefits which would accrue from a unification of this sort are particularly important at this time because of the increasing demand for transportation facilities, on the one hand, and the shortage of equipment, on the other. In the past, the carriers involved have been able to expand their facilities to take care of the growing volume of business through use of earnings. Increasing income taxes will substantially lessen their ability to do

56 this. Sale of stock to the public by these carriers individually for raising additional capital is not feasible, and extensive use of credit for expansion of facilities might prejudice their financial position.

Certain of the carriers involved have applications pending<sup>24</sup> under section 207 for extension of their operations. There are no operating rights under such applications which we may authorize to be included in the consolidation. Intermountain Transp. Co.—Purchase—Meisinger Stages, 5 M. C. C. 493, 494.

We find:

That acquisition by Associated Transport, Inc., of control of Arrow Carrier Corporation; Barnwell Brothers, Incorporated, Consolidated Motor Lines, Incorporated, Horton Motor Lines, Incorporated, McCarthy Freight System, Inc., M. Moran Transportation Lines, Inc., Southeastern Motor Lines, Incorporated, and Transportation, Incorporated, through purchase of their capital stock, and consolidation into Associated Transport, Inc., of the operating rights and properties of the carriers named, for ownership, management, and operation, upon the modified terms and con-

<sup>24</sup> In the event applicant elects to exercise the authority herein granted, by acquiring control of the carriers involved as proposed, it may request substitution of itself as applicant for the authority sought in the pending section 207 applications.

ditions above set forth, which terms and conditions as so modified are found to be just and reasonable, is a transaction within the scope of section 5 (2) (a), and will be consistent with the public interest.

That, upon consummation of the consolidation herein authorized, and pending determination of the "grandfather" applications of the carriers consolidated into it, applicant shall be entitled to continue the operations lawfully conducted by such carriers under the "grandfather" clauses of sections 206 (a) and 209 (a) pursuant to such applications, and applicant will be entitled to a certificate covering common-carrier operating rights which have been granted such carriers and covering such common-carrier rights as may be confirmed as result of the pending "grandfather" applications of such carriers, all of which rights are herein authorized to be unified in applicant, with duplications eliminated. Final determination with respect to the question as to whether the holding by applicant of such certificates and also of the permit claimed in MC-59866 (Sub-No. 1), authorizing the transportation of precious metals and supplies and equipment used in connection therewith, as previously stated, will be made in that proceeding.

That issuance by Associated Transport, Inc., of not exceeding 54,049 shares of preferred stock and 931,891 shares of common stock, for the purposes and upon the modified terms and conditions above set forth, (a) is for a lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for and consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.

An appropriate order will be entered.

MILLER, Commissioner, concurring:

The preferred stock in this case has been made a par value issue and also fully cumulative. I regard these provisions as of questionable wisdom for a new corporation.

Admittedly, this company is short of working capital and proposes to sell 15,000 shares of par value preferred stock to increase working capital, purchase equipment, and pay outstanding obligations but apparently no commitment with respect to such sale has been made and no underlying agreement entered into. Owing to the uncertainties created by the war, the market for new securities of any kind is, according to common report, far from favorable. It may logically be inquired, therefore, what the situation will be in the event that it should be found impossible to sell all

or any considerable part of the 15,000 shares of preferred stock at par.

A provision making dividends upon a preferred stock issue fully cumulative tends all too frequently to result in the use of needed surplus for the payment of wholly or partially unearned dividends in order to avoid the destruction of common stock values resulting from the accumulation of unpaid dividends on the preferred. In the event of any appreciable accumulations, moreover, the loss in value of the common is likely to be so large as to render it unavailable for financing. This in turn may have a tendency to force the corporation into borrowing, particularly where, as is true in this case, the fully cumulative preferred stock is also a par value issue. Any appreciable dividend accumulations on a preferred stock will not only cause a great loss in common stock values but will ordinarily result in reducing the market price of the preferred stock to a point below par.

In my view, therefore, the preferred stock should be cumulative only to the extent earned and not paid in each year up to 6 percent. In the event of inability to earn the preferred dividends in whole or in part in any year, there would then be less compulsion upon the management to pay the full dividends in such year. Moreover, because there would be no accumulations on this type of security, the nonpayment of such preferred dividends in whole or in part would have a less serious effect on common stock values than would such a nonpayment where the dividend is cumulative.

If necessary to induce the consent of the preferred stockholders to such a cumulative arrangement, they might be offered either a participation in profits contingent on past unearned and unpaid dividends or a fixed participation in profits in addition thereto. Thus the preferred would be entitled, but only to the extent that 6 percent dividends had not been earned and paid in any prior year or years, to 15 percent of all the earnings over and above the specified 6 percent dividend. Or the preferred stockholder might be entitled in each year to 20 percent of all earnings over and above his initial 6 percent dividends, such 20 percent to be applicable, first, to the payment of a fixed participation of 50 cents or \$1 per share or as much thereof as was earned before common dividends, and, second, to the payment of any dividends up to 6 percent not earned and paid in any prior year. Any balance of the 20 percent participation remaining after these payments would be applicable to the common stock.

59. ALLDREDGE, Commissioner, concurring:

Recognizing that some features of the proposed motor-carrier consolidation might be improved, the plan has one virtue

which, to my mind, is sufficient to counterbalance all of its apparent imperfections. That virtue lies in the fact that regional or territorial boundaries have been disregarded and a transportation system proposed which is designed not only to serve local and regional needs but to function as a unit along national lines. For this reason, which seems quite important to me, I concur in the report.

**ATCHINSON**, Acting Chairman, dissents.

**SPLAWN**, Commissioner, dissenting:

The report finds that the proposed consolidation "would present many opportunities for greater economy and efficiency of operation." The alleged opportunities for economy are vague and speculative, and the same general statement could probably be made with respect to any proposed consolidation. In *Transport Co.—Control—Arrow Carrier Corp.*, 36 M. C. C. 61, 78, we said with respect to similar claims made in that proceeding:

"In the absence of evidence that similar consolidations or expansions of operations on such a large scale have produced results anticipated by applicant, the testimony with respect to proposed economies and improvements in service is not convincing."

The report makes the ultimate finding that "the proposed unification is predominantly an end-to-end consolidation of complementary operations." This statement is not supported by any facts showing the actual operations of the particular companies and seems contrary to the finding of duplication of mileage to the extent of 13,546 miles. One of the companies conducts a special contract carrier service with armored vehicles. It could hardly be contended that such a service is complementary to the services rendered by the other parties to the consolidation.

These carriers have grown to their present size under the dominating leadership of the proprietary owners. The companies included herein have the single common characteristic that the proprietary owners are now willing to exchange that individual ownership for stock in the consolidated company. It is the intention of some to retire from active participation in the industry. The substitution of paid management for personalized ownership in the operation and control of these motor carriers will probably not lead to improvement in service or increase in economy and efficiency.

Fundamentally this is a plan which deals with the financial structure of the companies in such a way as to make it convenient ultimately for the present proprietors to dispose of their interests to the public and to divorce ownership from management. I fail to find any evidence as to how the actual operations of these sev-

eral carriers would fit into and merge, one with the other, so as to support the conclusion that the consolidated group would operate more efficiently and economically than the separate units.

**PATTERSON, Commissioner, dissenting:**

At least two aspects of this case, as reflected in the majority report, cause me to withhold my approval.

First, inclusion of the McCarthy contract operation amounts to grant of dual authority to Associated Transport, and on a basis not provided by statute or conforming to Commission precedents. Grant of such authority is authorized under Section 210 only where "for good cause shown" it is found to be consistent with the public interest. No good cause is shown, and the only interest here concerned appears to be the possible convenience and profit of participating carriers. No public interest is disclosed, and in the absence of such proof we should adhere to strict construction of this statute and conform to principles previously announced.

While the majority does not specifically approve such dual operations, it states that continuance of McCarthy's contract carrier operations in the transportation of precious metals and supplies and equipment used in connection therewith appears unobjectionable and permits continuance of same pending disposition  
61 of McCarthy's "grandfather" application, which application has been pending for many years. Manifestly this is equivalent to approval.

Second, the main purpose of Arrow inclusion appears to be the opportunity afforded a great banking institution to enter the vast motor carrier business which serves the nation. I cannot approve indirect participation by Kuhn, Loeb & Company as part owner of Associated Transport. The influence of such a financial power over the affairs of corporations, of which they own a part, is far beyond the proportion of stock held. Evils which have attended such participation in railroad transportation are well known. Section 5 of the Act was designed largely to avoid recurrence of such evils. The National Transportation Policy makes it a Commission responsibility to avoid dangers that may injure the transportation system which serves national commerce and defense. I regard part ownership of Associated Transport by Kuhn, Loeb & Company as inimical to public interest and national welfare.

Chairman **EASTMAN** did not participate in the disposition of this proceeding.



Investment Securities and Advances	8,503.29	98,830.64	115,393.32	65,553.11	0,711.26	510.00	60,500.00				335,893.02
Deferred Debts	85,795.40	76,966.74	137,672.14	73,834.13	28,967.19	118,830.56	8,444.01	38,674.39	2,612.64	4,361.13	1,052,622
Grand Total	1,086,859.05	942,550.82	1,690,903.45	2,125,702	68,827,154.03	1,046,250.10	105,470.46	478,426.74	69,276.42	39,708.43	19,204,406.00
LIABILITIES											
Current Liabilities											
Notes Payable	5,000.00	85,127.56		39,728.42	13,500.00		24,000.00	95,914.46	27,500.00	900.00	286,660.44
Payables to Associated Offices and Employees	0.00	0.00	187,307.77								197,372.63
Accounts Payable	64,373.35	138,626.50	188.07	9,002.40	17,584.00			12,987.17			45,184.52
Notes Payable	31,714.46	13,803.26	279,550.00	125,726.92	124,734.29	342,310.50	23,304.83	273,162.90	84	53,027.07	1,466,672.82
U. S. Government	12,820.02	18,966.04	49,018.83	44,250.95	23,434.50	35,332.04		6,771.66	1,047.21		295,444.20
Interest accrued	25,860.00	1,000.00	144,315.36	197,432.37	50,013.00	77,817.21	10,135.51	6,460.54	51,529.01	36,400.66	626,556.00
Other current liabilities	1,214.69		5,931.71	4,387.80	32,500	2,546.34			72.92	823.00	196.11
Total	149,375.26	372,296.48	481,671.24	500,003.49	257,124.08	577,003.13	58,404.88	331,635.73	2,710.78	134,873.07	508,762,871,541.16
Advance Payable				3,189.72	123,901.27			29,277.17			97,706.88
Equipment and Other Long-Term Obligations	36,797.71	144,733.47	300,233.32	172,820.44		390.00		108,682.47	10,500.00		105,000.00
Reserves			36,061.61	13,721.75	3,529.80						55,042.77
Capital Stock											
Preferred stock	138,000.00	12,300.00		33,325.00					24,800.00		246,120.00
Common stock, less premiums and discounts	98,825.00	100,000.00	11,415.00	212,081.00	101,000.00	35,000.00	50,000.00	25,000.00	2,000.00	100,000.00	855,750.00
Capital stock subscribed			479,565.04	7,250.00							479,565.04
Total	236,825.00	132,300.00	439,979.04	25,575.00	101,000.00	35,000.00	50,000.00	25,000.00	24,800.00	100,000.00	1,537,176.04
Unappropriated Surplus											
Unappropriated surplus	673,841.06	393,318.87	1,212,001.25	233,840.08	269,034.50	904,247.80	53,975.58	10,150,000.00	31,250.00	150,834.84	31,265.55
Earnings	673,841.06	393,318.87	1,212,001.25	233,840.08	269,034.50	904,247.80	53,975.58	10,150,000.00	31,250.00	150,834.84	31,265.55
Total	1,086,859.05	942,550.82	1,690,903.45	2,125,702.88	154,614.01	1,046,250.10	105,470.46	478,426.74	69,276.42	39,708.43	19,204,406.00
Grand Total											

NOTES: (a) Cash and other assets indicated. (b) As of May 17, 1941. (c) As of April 26, 1941. (Dr) Debit balance.

## Appendix B

ASSOCIATED TRANSPORT, INC.—CONTROL—ARROW CARRIER CORPORATION, ET AL.—ASSOCIATED TRANSPORT, INC.—  
ISSUANCE OF SECURITIES

Comparative Statement of Revenue and Net Income of Companies Involved for the Years 1932 to 1940, Inclusive, and Four-  
Month Periods Ending April 30, 1940 and 1941

CARRIERS	1932	1933	1934	1935	1936	1937	1938	1939	1940	Four months ending April 30.	
										1940	1941
Arrow Carrier Corporation:											
Revenue	\$986,018.93	\$724,839.82	\$783,330.07	\$790,291.91	\$800,110.70	\$670,645.35	\$1,000,115.56	\$1,510,477.04	\$1,408,001.13	\$475,107.87	\$526,043.63
Net income:											
Before income taxes	38,244.56	61,674.20	77,792.01	53,524.37	6,565.94	D 23,187.92	38,833.28	147,134.77	92,564.17	16,319.40	71,663.21
After income taxes	32,580.75	49,982.47	69,697.45	45,805.05	6,562.70	D 23,187.92	30,595.94	117,134.03	70,660.51	16,319.40	71,663.21
Barnwell Brothers, Incorporated:											
Revenue	346,466.69	485,385.65	563,064.51	735,796.76	1,076,070.32	1,100,453.94	1,385,252.70	1,870,080.51	2,066,670.71	641,454.07	832,836.20
Net income:											
Before income taxes	3,190.87	19,074.69	1,025.18	43,529.37	54,026.09	D 43,560.91	70,422.07	100,007.50	84,044.75	D 3,728.70	94,153.64
After income taxes	2,473.62	15,067.37	1,535.21	34,346.26	47,053.31	D 43,560.91	54,343.64	123,496.88	67,845.01	D 3,728.70	67,907.83
Consolidated Motor Lines, Incorporated:											
Revenue	\$,218,666.67	1,394,231.20	1,677,121.04	1,809,226.09	2,156,126.91	2,778,533.73	3,797,746.23	4,511,435.85	4,565,529.36	\$,1578,776.52	\$,22,075,770.82
Net income:											
Before income taxes	4,127.80	D 80,432.17	D 0,894.11	60,237.06	D 30,721.59	D 121,290.34	87,190.15	86,108.48	188,083.00	\$,16,902.27	\$,272,082.30
After income taxes	4,202.91	D 80,432.17	D 0,894.11	52,047.33	D 30,721.59	D 121,290.34	70,598.91	71,971.42	120,331.54	\$,16,902.27	\$,253,186.08
Horton Motor Lines, Incorporated:											
Revenue	253,354.40	497,027.97	457,159.95	\$80,933.70	1,240,859.65	2,454,719.18	2,813,477.23	2,825,693.40	4,250,093.07	1,300,152.38	1,766,096.52
Net income:											
Before income taxes	12,519.48	30,465.99	D 1,254.54	74,596.03	164,814.79	\$,148,120.00	234,509.03	543,244.47	308,997.81	70,450.98	203,093.54
After income taxes	8,303.61	13,514.31	D 6,063.42	63,100.43	136,648.03	\$,107,293.36	295,390.65	392,540.95	197,084.45	70,450.98	208,241.03
McCarthy Freight System, Inc.:											
Revenue	420,612.76	474,661.71	587,092.23	725,328.43	896,000.55	954,345.65	1,197,622.26	1,082,394.81	1,901,634.04	\$,832,235.15	\$,692,772.53
Net income:											
Before income taxes	6,544.26	D 6,913.96	D 2,393.46	20,624.20	44,734.39	D 39,853.36	20,267.00	81,501.72	132,828.23	\$,15,316.77	\$,79,357.96
After income taxes	4,882.95	D 6,913.96	D 2,686.24	14,817.07	39,857.37	D 39,853.36	17,397.00	68,448.94	88,261.92	\$,15,116.71	\$,79,357.96

McLEAN TRUCKING CO., INC., ET AL.

M. Moran Transportation Lines, Incorporated	Revenue	517,905.90	604,714.49	824,162.48	2,195,951.80	1,946,182.53	2,535,316.43	2,814,859.67	6,896,531.66	1,040,080.11
	Net income	26,411.50	26,765.04	2,919.11	17,220.69	1,063.23	21,931.17	85,582.85	119,255.00	10,579.99
	Before income taxes	26,411.50	26,765.04	2,919.11	17,220.69	1,063.23	21,931.17	85,582.85	119,255.00	10,579.99
	After income taxes	26,411.50	26,765.04	2,919.11	17,220.69	1,063.23	21,931.17	85,582.85	119,255.00	10,579.99
Southeastern Motor Lines, Incorporated	Revenue	25,557.42	26,765.04	2,513.61	32,012.33	1,083.23	21,931.17	36,954.21	133,441.02	181,153.07
	Net income	(b)	(b)	(b)	(b)	(b)	183,251.63	368,501.44	489,774.03	133,441.02
	Before income taxes	(b)	(b)	(b)	(b)	(b)	183,251.63	368,501.44	489,774.03	133,441.02
	After income taxes	(b)	(b)	(b)	(b)	(b)	183,251.63	368,501.44	489,774.03	133,441.02
Transportation, Incorporated	Revenue	94,558.55	11,965.89	69,187.79	280,632.14	238,336.39	1,089,713.57	855,835.28	103,000.46	817,057.71
	Net income	77,811.26	34,625.72	62,432.53	242,218.47	196,757.78	856,243.49	570,188.52	103,000.46	606,185.73
	Before income taxes	77,811.26	34,625.72	62,432.53	242,218.47	196,757.78	856,243.49	570,188.52	103,000.46	606,185.73
	After income taxes	77,811.26	34,625.72	62,432.53	242,218.47	196,757.78	856,243.49	570,188.52	103,000.46	606,185.73
NON-CARRIERS										
Barnesell Warehouse & Brokerage Company	Revenue	3,443,625.37	4,299,836.34	5,062,520.28	6,253,225.08	8,018,262.36	11,281,526.03	18,705,204.41	5,897,544.14	7,656,988.81
	Net income	94,558.55	11,965.89	69,187.79	280,632.14	238,336.39	1,089,713.57	855,835.28	103,000.46	817,057.71
	Before income taxes	94,558.55	11,965.89	69,187.79	280,632.14	238,336.39	1,089,713.57	855,835.28	103,000.46	817,057.71
	After income taxes	94,558.55	11,965.89	69,187.79	280,632.14	238,336.39	1,089,713.57	855,835.28	103,000.46	817,057.71
Brown Equipment & Manufacturing Company	Revenue	77,811.26	34,625.72	62,432.53	242,218.47	196,757.78	856,243.49	570,188.52	103,000.46	606,185.73
	Net income	77,811.26	34,625.72	62,432.53	242,218.47	196,757.78	856,243.49	570,188.52	103,000.46	606,185.73
	Before income taxes	77,811.26	34,625.72	62,432.53	242,218.47	196,757.78	856,243.49	570,188.52	103,000.46	606,185.73
	After income taxes	77,811.26	34,625.72	62,432.53	242,218.47	196,757.78	856,243.49	570,188.52	103,000.46	606,185.73
Conger Realty Company	Revenue	94,558.55	11,965.89	69,187.79	280,632.14	238,336.39	1,089,713.57	855,835.28	103,000.46	817,057.71
	Net income	77,811.26	34,625.72	62,432.53	242,218.47	196,757.78	856,243.49	570,188.52	103,000.46	606,185.73
	Before income taxes	77,811.26	34,625.72	62,432.53	242,218.47	196,757.78	856,243.49	570,188.52	103,000.46	606,185.73
	After income taxes	77,811.26	34,625.72	62,432.53	242,218.47	196,757.78	856,243.49	570,188.52	103,000.46	606,185.73

See footnotes at end of table.

*Comparative Statement of Revenue and Net Income of Companies Involved for the Years 1932 to 1940, Inclusive, and Four-Month Periods Ending April 30, 1940 and 1941—Continued*

	1932	1933	1934	1935	1936	1937	1938	1939	1940	Four months ending April 30	1941
Southern New England Terminals, Inc.											
Revenue									\$17,100.96	\$3,096.59	\$9,113.32
Net income									3,318.96	3,018.59	7,632.75
Before income taxes									2,826.00	3,018.59	7,632.75
After income taxes											
Other noncarrier companies											
Revenue											
Net income									1,037,406.95	362,373.90	230,073.81
Before income taxes											
After income taxes											
Total all companies									255,228.92	95,897.07	88,306.99
Revenue									188,510.11	70,494.74	151,910.99
Net income											
Before income taxes									19,742,761.36	6,229,918.04	7,987,064.65
After income taxes											
Total									1,240,520.78	4,121,063.90	198,903.53
Revenue									47,758,704.63	173,501.20	733,066.72
Net income											
Before income taxes											
After income taxes											

<sup>a</sup> Defined

<sup>b</sup> Because of change in fiscal year, amounts shown are for 10-month period ended March 31, 1938.

<sup>c</sup> Data not available.

<sup>d</sup> Commenced operations, March 1, 1938.

<sup>e</sup> Five period ended May 17.

<sup>f</sup> Four period ended April 19.

<sup>g</sup> Period January 1 to April 29.

# Appendix C

ASSOCIATED TRANSPORT, INC. CONTROL ARROW CARRIER CORPORATION, ET AL. ASSOCIATED TRANSPORT, INC.  
ISSUANCE OF SECURITIES

Net Worth as of April 30, 1941,\* and Net Income for Fiscal Year Ended on that Date of Companies Involved and Consideration for Stock Proposed to be Acquired by Associated Transport, Inc.

	Net worth		Net income		Consideration		
	Per books	Adjusted	Per books	Adjusted	Stock of Associated Transport, Inc.		Total
					Preferred	Common	
CARRIERS							
Arrow Carrier Corporation	\$910,699.69	\$917,887.92	\$126,004.32	\$148,376.89	\$667,700.00	\$55,889.00	\$723,589.00
Barnwell Brothers, Incorporated	323,618.87	401,436.29	165,727.44	127,318.70	366,000.00	33,039.00	419,039.00
Consolidated Motor Lines, Incorporated	783,532.29	742,286.99	306,625.86	263,812.85	567,200.00	114,636.00	701,836.00
Hornum & Son, Incorporated	1,334,799.68	1,405,352.00	334,837.80	425,436.96	1,178,000.00	178,689.00	1,356,689.00
Midway Freight System, Incorporated	6,411,928.99	422,021.83	170,162.16	133,118.00	328,300.00	37,166.00	365,466.00
Al. Martin Transportation Lines, Incorporated	339,613.80	331,451.91	92,239.03	79,622.95	221,400.00	14,586.00	235,986.00
Southeastern Motor Lines, Incorporated	106,973.38	96,811.32	38,301.32	13,324.77	79,000.00	21,793.00	100,793.00
Transportation, Incorporated	8,840.37	Dr. 48,263.12	Dr. 12,789.70	Dr. 22,051.17		5,335.00	5,335.00
Total, carrier companies	4,601,977.04	4,462,035.17	1,221,086.41	1,108,990.83	3,447,000.00	550,914.00	3,998,914.00
NON-CARRIERS							
Barnwell Warehouse & Brokerage Company	56,029.64	115,369.28	3,415.59	3,424.03	122,300.00	16,876.00	139,076.00
Crown Equipment & Rental Company	226,844.84	242,145.40	104,523.42	104,662.71	200,000.00	46,094.00	255,094.00
Consolidated Realty Company	131,265.55	131,318.30	66,865.89	68,217.55	704,700.00	30,988.00	735,688.00
Southern New England Terminals, Inc.	31,855.40	29,434.98	7,440.16	8,613.30	21,400.00	3,771.00	25,171.00
Total, non-carrier companies	476,015.43	438,268.07	182,247.06	184,917.76	457,300.00	97,729.00	555,029.00
Total, all companies	5,077,992.47	4,900,243.24	1,403,415.50	1,383,908.62	3,904,300.00	648,643.00	4,552,942.00

\* Unless otherwise indicated.

<sup>b</sup> As of May 17, 1941.

<sup>c</sup> As of April 26, 1941.

<sup>d</sup> Period ended May 17, 1941.

\* Period ended April 26, 1941.

<sup>c</sup> Excludes investment in stock of Barnwell Brothers, Incorporated.

<sup>d</sup> Debit.

<sup>e</sup> Debit balance.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 16th day of March, A. D. 1942

No. MC-F-1612

Associated Transport, Inc.—Control and Consolidation—Arrow Carrier Corporation, et al.

No. MC-F-1613

Associated Transport, Inc.—Issuance of Securities

Investigation of the matters and things involved in these proceedings having been made, and the Commission, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That acquisition by Associated Transport, Inc., New York, N. Y., of control of Arrow Carrier Corporation, Paterson, N. J., Barnwell Brothers, Incorporated, Burlington, N. C., Consolidated Motor Lines Incorporated, Hartford, Conn., Horton Motor Lines, Incorporated, Charlotte, N. C., McCarthy Freight System, Inc., Taunton, Mass., M. Moran Transportation Lines, Inc., Buffalo, N. Y., Southeastern Motor Lines, Incorporated, Bristol, Va., and Transportation, Incorporated, Atlanta, Ga., through purchase of capital stock, and consolidation into Associated Transport, Inc., of the operating rights and properties of said carriers, for ownership, management, and operation, be, and it is hereby, approved and authorized, subject to the terms and conditions set forth in the findings in said report.

It is further ordered, That Associated Transport, Inc., be, and it is hereby, authorized to issue 54,049 shares of preferred stock and 931,891 shares of common stock, for the purposes, and upon the terms and conditions set forth in the findings in said report.

It is further ordered, That, if applicant desires to consummate the transaction herein authorized, it shall (1) notify this Commission, in writing, of the date upon which it is intended to effect (a) acquisition of control and (b) consummation of the consolidation, or any portion thereof, (2) confirm, in writing to the Commission, the dates on which acquisition of control and consolidation are effected, and (3) coincident with consummation of the consolidation or any part thereof, promptly take such steps as will insure compliance with sections 215, 217, and 218 of the

Interstate Commerce Act, and with rules, regulations, and requirements prescribed thereunder.

It is further ordered, That, if the authority herein granted is exercised, concurrently with the acquisition of control being effected, applicant shall be subject to the provisions of sections 204 (a) (1) and (2), 214, and 220 of the act to the same extent as are the carriers of which it acquires control.

It is further ordered, That, unless applicant evidences its election to exercise the consolidation authority herein granted by acquiring control of the carriers involved, within six months from the date hereof, this order shall be of no further force and effect.

It is further ordered, That, except as herein authorized, said stock shall not be sold, pledged, repledged, or otherwise disposed of by applicant, unless and until so ordered by this Commission.

66 It is further ordered, That applicant shall report concerning the matters herein involved on forms BMC-28 and BMC-30 in conformity with orders dated August 3, 1936, respecting applications filed under section 214 of the act.

It is further ordered, That recital in said report of balance-sheet and other financial data shall not be construed as approving accounting methods which have been followed or expenditures represented thereby.

It is further ordered, That, before recording the consolidation upon its books, applicant shall submit the related journal entries, in triplicate, to our Bureau of Motor Carriers for approval.

And it is further ordered; That nothing herein shall be construed to imply any guaranty or obligation as to said stock, or dividends thereon, on the part of the United States, or as a determination of the operating rights of any person or persons under any section of the act, except section 5 thereof, as expressly determined herein.

By the Commission.

[SEAL]

W. P. BARTEL,

*Secretary.*

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*Appendix D.*

Carrier Corporation, Et Al.

Associated Transport, Inc.—Control and Consolidation—Arrow  
Operating Authority of Carriers Involved

Arrow

No. MC-71536.—Issuance of a certificate authorized under "grandfather" clause in 17 M. C. C. 389, 21 M. C. C. 159.

No. MC-71536 (Sub-No. 1).—Certificate issued March 3, 1941, covering operating rights acquired pursuant to 15 M. C. C. 203.

### Barnwell

No. MC-14181, embracing Nos. MC-14181 (Sub-No. 1) and MC-14181 (Sub-No. 3).—Certificate issued June 9, 1941.

No. MC-14181 (Sub-No. 4).—Certificate issued October 17, 1941.

### Consolidated

No. MC-18159, embracing Nos. MC-9605, MC-17247, MC-44450, and MC-84585.—Certificate issued May 26, 1941.<sup>b</sup>

### Horton

No. MC-73943, embracing No. MC-73493 (Sub-No. 1).—Issuance of certificate authorized under "grandfather" clause by order entered October 26, 1940, amended April 10, 1941. Order does not cover operating rights claimed in application between Baltimore, Md., and Pittsburgh, Pa., and between Cumberland, Md., and Jennerstown, Pa., which are to be made the subject of a separate proceeding.

No. MC-73943 (Sub-No. 2).—Certificate issued June 11, 1941.

No. MC-73943 (Sub-No. 3).—Certificate issued February 10, 1941.

No. MC-73943 (Sub-No. 4).—Certificate issued August 26, 1941.

No. MC-73943 (Sub-No. 6).—Certificate issued October 7, 1941.

### McCarthy

No. MC-16034.—Issuance of certificate authorized under "grandfather" clause by order entered October 24, 1939, as amended December 6, 1939, and May 13, 1941.

No. MC-59865 (Sub-No. 1).—Issuance of a certificate authorized under "grandfather" clause by order entered February 11, 1939, covering operating rights acquired pursuant to 5 M. C. C. 684.

No. MC-59865 (Sub-No. 3).—Certificate issued February 5, 1941.

68 No. MC-59866 (Sub-No. 1).—Pending application for permit under "grandfather" clause covering operating rights acquired pursuant to 5 M. C. C. 684.

<sup>a</sup> Application for extension of operations pending under section 207 in No. MC-14181 (Sub-No. 5).

<sup>b</sup> Applications for extension of operations pending under section 207 in Nos. MC-73943 (Sub-No. 5), MC-73943 (Sub-No. 7), MC-73943 (Sub-No. 10), MC-73943 (Sub-No. 11), and, under section 210a (a) in No. MC-73943 (Sub-No. 9TA).

## Moran \*

No. MC-16034.—Issuance of certificate authorized under "grandfather" clause in 23 M. C. C. 139.

No. MC-16034 (Sub-No. 3 TA).—Authority for temporary extension of operations, for not exceeding 180 days, granted February 14, 1942, under section 219a, (a).

## Southeastern \*

No. MC-60451.—Issuance of certificate authorized under "grandfather" clause by order entered November 29, 1938.

No. MC-60451 (Sub-No. 2), embracing No. MC-76037.—Pending application for certificate under "grandfather" clause.

No. MC-60451 (Sub-No. 3).—Certificate issued November 4, 1941, covering operating rights acquired pursuant to 25 M. C. C. 701.

## Transportation \*

No. MC-52692.—Pending application for certificate under "grandfather" clause covering operating rights acquired pursuant to 35 M. C. C. 156.

No. MC-52692 (Sub-No. 1).—Certificate issued November 18, 1940, covering operating rights acquired pursuant to 35 M. C. C. 156.

No. MC-52692 (Sub-No. 2).—Certificate issued July 30, 1940.

No. MC-52692 (Sub-No. 3).—Certificate issued December 23, 1941.

No. MC-52692 (Sub-No. 5).—Certificate issued July 3, 1941, pursuant to 27 M. C. C. 679.

No. MC-52692 (Sub-No. 6).—Certificate issued February 21, 1942.

No. MC-52692 (Sub-No. 7).—Certificate issued February 27, 1941.

No. MC-52692 (Sub-No. 9).—Certificate issued September 29, 1941.

<sup>1</sup> Application for extension of operations pending under section 207 in No. MC-16034 (Sub-No. 2).

<sup>2</sup> Application for extension of operations pending under section 207 in Nos. MC-60451 (Sub-No. 1) and MC-76037 (Sub-No. 1).

<sup>3</sup> Application for extension of operations pending under section 207 in No. MC-52692 (Sub-No. 8).

## EXHIBIT B

## ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 22nd day of April, A. D. 1942.

No. MC-F-1612

Associated Transport, Inc.—Control and Consolidation—Arrow Carrier Corporation, et. al.

No. MC-F-1613

Associated Transport, Inc.—Issuance of Securities

Upon consideration of the record in the above-entitled proceedings and of petitions of the Antitrust Division of the Department of Justice, The Secretary of Agriculture, The National Grange, Virginia State Horticultural Society, Inc., West Virginia State Horticultural Society, Maryland State Horticultural Society (including petition for leave to intervene), Berks-Lehigh Mountain Fruit Growers, Inc., Appalachian Apple Service, Inc., and the American Farm Bureau Federation (including petition for leave to intervene), for reopening rehearing, reargument, and reconsideration by the Commission of its decision, entered March 16, 1942, in said proceedings, and good cause therefor appearing:

It is ordered, That said petitions be, and they are hereby, denied. By the Commission.

[SEAL]

W. P. BARTEL,  
Secretary.

70 In District Court of the United States for the Southern District of New York

[Title omitted.]

*Petition of intervention of the Secretary of Agriculture*

*To the honorable the Judges of Said Court:*

The Secretary of Agriculture of the United States moves for leave to intervene as a plaintiff in this action, in order to assert the grounds of complaint set forth in his proposed complaint, a

copy of which is attached, pursuant to the authority contained in  
 Section 201 of the Agricultural Adjustment Act of 1938, as  
 71 amended (52 Stat. 36; 7 U. S. C. 1940 ed. 1291), and Section  
 212 of the Judicial Code (36 Stat. 1150; 28 U. S. C. 1940  
 ed. 45a).

ASHLEY SELLERS,

Ashley Sellers,

*Acting Solicitor,*

*United States Department of Agriculture,*

*Washington, D. C.*

HASKELL DONOHO,

Haskell Donoho,

*Of Counsel*

#### CERTIFICATE OF SERVICE

I hereby certify that I, this day, served the foregoing document  
 upon all parties of record in this proceeding by mailing a copy  
 thereof, properly addressed, to each such party.

Dated at Washington, D. C., this 19th day of May 1942.

HASKELL DONOHO,

Haskell Donoho,

*Senior Attorney,*

*United States Department of Agriculture,*

*Washington, D. C.*

72 In the District Court of the United States for the  
 Southern District of New York

[Title omitted.]

#### *Complaint*

1. The Secretary of Agriculture of the United States, inter-  
 vening plaintiff, adopts by reference the complaint of the original  
 plaintiff, McLean Trucking Corporation, Inc., with the exception  
 of paragraphs I and VIII thereof, and by way of further com-  
 plaint states:

73 2. The consummation of the proposed merger would in  
 substantial measure result in the elimination of motor car-  
 rier competition in the East.

3. The consummation of the proposed merger would, as the  
 Secretary of Agriculture is informed and believes, result ul-  
 timately in the cartelization of motor and rail transportation in  
 the East.

4. The elimination of competition in eastern transportation would adversely affect the interest of the producers and consumers of agricultural commodities.

WHEREFORE, intervening petitioner prays:

(a) That a decree be entered annulling and setting aside the existing order of the Interstate Commerce Commission, which order is reproduced as Exhibit "A" in the complaint of the original plaintiff, McLean Trucking Company, Inc.;

(b) That by such decree the corporate defendants, their officers and agents, be permanently enjoined and restrained from merging or attempting to merge said corporations pursuant to the authority granted in the order referred to above;

(c) That intervening plaintiff have such other and further relief in the premises as the nature of the case shall require and to this Court shall seem proper.

Respectfully submitted.

ASHLEY SELLERS,

Ashley Sellers,

Acting Solicitor,

*United States Department of Agriculture,  
Washington, D. C.*

By direction of the Secretary,

HASKELL DONOHO,

Haskell Donoho,

*Of Counsel.*

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In District Court of the United States  
For the Southern District of New York

[Title omitted.]

*Answer of Interstate Commerce Commission*

The Interstate Commerce Commission, hereinafter called the Commission, one of the defendants in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the bill of complaint contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraph I of the complaint, the Commission for the purposes of this suit admits the allegations thereof except that, as to the allegation that plaintiff "is authorized to carry

on and conduct said business," the Commission denies that plaintiff is so authorized by virtue of the issuance of a certificate of public convenience and necessity covering its operations but admits that there is a proceeding pending before the Commission on an application by plaintiff for such a certificate under the grandfather clause of section 206(a) of Part II of the Interstate Commerce Act and that pending its determination plaintiff is authorized to conduct its operations.

## II

Answering paragraph III of the complaint, the Commission admits the allegations thereof.

## III

Answering paragraph III of the complaint, the Commission, for the purposes of this suit, admits the allegations thereof.

## IV

Answering paragraphs IV to VIII, inclusive, of the complaint, the Commission admits and alleges that on March 16, 1942, it made and entered the report and order, referred to in paragraph V of the complaint in a proceeding then pending before it entitled Docket No. M. C.-F-1612, Associated Transport, Inc.—Control and Consolidation—Arrow Carrier Corporation et al., and Docket No. M. C.-F-1613, Associated Transport, Inc.—Issuance of Securities; admits and alleges that said proceeding was instituted by the filing with it, July 25, 1941, of the two applications of Associated Transport, Inc., referred to in paragraph IV of the complaint, by the first of which the applicant sought authority under section 5, Part I, of the Interstate Commerce Act (1) to acquire control, through purchase of capital stock, of the eight corporations named in said paragraph IV, and (2) to consolidate into itself the operating rights and properties of those corporations within one year from date of acquisition of control, and by the second of which the applicant sought authority under section 214, Part II, of the Act to issue preferred and common stock to enable it to acquire control of the said corporations and of the four associated noncarrier corporations referred to in the said paragraph IV, and for the further purposes of providing funds for working capital and other corporate purposes, and for conversion from time to time of the preferred stock proposed to be issued; admits and alleges that full hearings were had upon the said applications and that

thereafter it made and entered the above-mentioned report and order of March 16, 1942, whereby it authorized and approved the proposed consolidation and other transactions to the extent and subject to the conditions set forth in the said report and order, a true copy whereof is attached to the complaint, "marked exhibit A"; and admits and alleges that, following the entry of said order, the petitions for rehearing, reargument and reconsideration, referred to in paragraph V, of the complaint, were filed with it, and that the said petitions were denied by order entered April 22, 1942, a copy of which is attached to the complaint, "marked exhibit B."

The Commission further alleges that in said proceeding the parties thereto were, and that each of them was, accorded the full hearing provided for in and by the Interstate Commerce Act; that in said hearing a large volume of testimony and other evidence bearing upon the matters covered in and by said order was submitted to the Commission for consideration, by the counsel of said parties; that at said hearing and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by plaintiffs in this suit, whereupon the Commission determined 77 said matters and entered and duly served upon the parties to said proceedings, its said report and order; that said report and order includes the Commission's findings of fact, decision, conclusions, orders and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which said report and order of March 16, 1942, are based.

The Commission further alleges that the findings and conclusions in said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid.

The Commission further alleges that in making said report it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including matters covered by the allegations of the bill of complaint herein.

The Commission further alleges that said report and order of March 16, 1942, was not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence or without evi-

dence to support it: that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in said bill of complaint.

The Commission specifically denies that plaintiffs will suffer irreparable damage by reason of its report and order as alleged in paragraph VI of the bill of complaint.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint, in so far as they conflict either with the  
78 allegations herein, or with the statements or conclusions of fact included in said report and order of March 16, 1942.

All of which matters and things the Commission is ready to aver, maintain and prove as this Honorable Court shall direct, and hereby prays that said bill of complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,

DANIEL W. KNOWLTON,

By Daniel W. Knowlton,

*Chief Counsel.*

79 [Duly sworn to by Claude R. Porter; jurat omitted in printing.]

80 In District Court of the United States for the Southern District of New York

[Title omitted.]

*Amendment to Answer of Interstate Commerce Commission*

The Interstate Commerce Commission, one of the defendants in the above suit, having heretofore made and filed its answer to the bill of complaint, hereby amends the same by this amendment to its answer, in which it says:

I

That the bill of complaint herein seeks to have enjoined and set aside an order made and entered by it on March 16, 1942, in a consolidated proceeding known as Associated Transport, Inc.—Control and Consolidation, and Associated Transport, Inc.—Issuance of Securities; that, by that order is granted certain authority to the applicant in the proceeding, Associated Transport, Inc., for the acquisition of control and consolidation of eight motor carriers, all as shown in the bill of complaint herein and exhibits thereto attached; that subsequently, however, the said order of March 16,

of 1,380 shares outstanding of the preferred stock of Arrow Carrier Corp. The agreement with reference to acquiring Arrow stock had been entered into by the Associated Transport, Inc. and The Transport Company (a subsidiary of Kuhn, Loeb & Company, Investment Bankers). The Transport Company did not own the common stock which it undertook to sell to the Petitioner, but under agreement with Arrow's common stockholders it had in effect an option to purchase such stock. The aforesaid Arrow stock was to be acquired in consideration of 6,877 preferred shares and 55,899 common shares of Associated Transport, Inc. The aforesaid authority authorized the Petitioner to issue such shares of its capital stock for such purposes. (Provision for the issuance from time to time of 27,508 shares of common stock for the conversion of this preferred stock was included.)

85 3. In the Commission's order of March 16th, 1942 above described, it was stated in the footnote on sheet 5 thereof—

"We were apprised during the course of oral argument that the option has now expired and that there is some doubt whether The Transport Company will be in a position to deliver Arrow's stock to applicant, as agreed. In the event the parties are unable to include Arrow in the consolidation as herein authorized, the transaction may nevertheless be consummated in other respects pursuant to our order herein and without necessity for further or modified authority."

4. Under date of April 15th, 1942, in a reply to the petition of various interveners for reopening and rehearing the above entitled matter, petitioner stated with respect to Arrow that it had been notified by The Transport Company of The Transport Company's decision not to acquire Arrow Carrier Corp.

5. Under date of April 16, 1942, and in compliance with provisions of the aforesaid order of March 16th, 1942, petitioner advised the Commission that—

"the stock of Arrow Carrier Corporation will not be acquired on the closing date. The reason for the nonacquisition of Arrow stock, as aforesaid, is that Associated has been notified by The Transport Company and by Kuhn, Loeb Co. that they have not acquired and do not intend to acquire the stock of Arrow. Accordingly, they are and will be unable to perform the contract between Transport and Associated, dated July 22, 1941, and mutual releases from this contract have been exchanged and Mr. J. S. Arnold, The Transport Company representative on the Board of Directors of Associated, has resigned."

On April 30th, 1942, pursuant to the rules and regulations of the Commission, there was filed with your honorable body a ten-day report representing disposal of securities under your afore-

said order of March 16th, 1942, which report (Form BMC 28) read in part:

"The Interstate Commerce Commission is advised that because of the failure of The Transport Company and/or Kuhn, Loeb & Co. to comply with the terms and conditions of the contract between The Transport Company and Associated Transport, Inc. dated July 22, 1941, Associated Transports, Inc. was not  
86 able to and will not be able to acquire the stock of Arrow  
Carrier Corporation (authority for which acquisition was included in the Commission's order of March 16, 1942) in accordance with the aforesaid contract with The Transport Company; furthermore said contract has been entirely cancelled and terminated and mutual releases have been exchanged between The Transport Company, Kuhn, Loeb & Co., and Associated Transport, Inc. Associated Transport, Inc. further states that it will not revive or consent to the revival of said contract and intends to stand on the failure of The Transport Company and/or Kuhn, Loeb & Co. to comply with the terms of the aforesaid contract."

6. On or about May 5th, 1942 there was commenced in the United States District Court, Southern District of New York, a suit in the name of McLean Trucking Company, Inc., which suit sought among other things to set aside the order of the Commission in the above caption cases in part, at least, on grounds connected with that portion of the Commission's order authorizing the Arrow acquisition.

7. In the interest of simplifying the issues in said suit and to avoid encumbering the record and consuming the time of the aforesaid Federal Court with pleadings or arguments addressed to the now moot question of the Arrow acquisition, Associated Transport, Inc., respectfully petitions your Honorable Body that appropriate modifications be made conforming the authority conferred on Petitioner in the premises by your order of March 16th, 1942, in cases—Associated Transport, Inc.—Control and Consolidation—Arrow Carrier Corporation, et al, Docket No. MC-F-1612 and Associated Transport, Inc.—Issuance of Securities. Docket No. MC-F-1613; with the fact that Petitioner can not and will not acquire the stock of Arrow Carrier Corporation as permitted by said order.

ASSOCIATED TRANSPORT, INC.,  
1775 Broadway, New York, N. Y.  
By B. M. SEYMOUR, President.  
CLAUDE A. COCHRAN,  
HUGH M. JOSELOFF,  
MORTIMER A. SULLIVAN,

*Attorneys.*

Dated at New York, N. Y., May 21st, 1942.

87 B. M. SEYMOUR being duly sworn, deposes and says that he is the President of Associated Transport, Inc., the Petitioner herein and that he has read the foregoing petition and that the matters therein contained are true. Deponent further says that he has affixed his signature to said petition with the knowledge of and pursuant to the authority duly conferred upon him by the Directors of Associated Transport, Inc.

Subscribed and sworn to before me this 22nd day of May 1942.

PETER W. SPIESS,  
Notary Public.

#### CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addresed, to each party.

Dated at New York, N. Y., this 22nd day of May 1942.

B. D. RYAN.

A true copy.

[SEAL]

W. P. BARTEL,  
W. P. Bartel,  
Secretary, Interstate  
Commerce Commission.

#### EXHIBIT B

#### ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 8th day of June, A. D. 1942

No. MC-F-1612

Associated Transport, Inc.—Control and Consolidation—Arrow Carrier Corporation; et al.

No. MC-F-1613

Associated Transport, Inc.—Issuance of Securities

It appearing, That by order entered herein March 16, 1942, applicant, Associated Transport, Inc., of New York, N. Y., was authorized, among other things, to acquire control of and consolidate with Arrow Carrier Corporation, of Paterson, N. J., and to issue 6,877 shares of its preferred stock and 55,880 shares of its

common stock for that purpose and 27,508 shares of common stock for conversion of preferred stock so issued;

It further appearing, That the contract theretofore entered into between applicant and The Transport Company, of New York, N. Y., for acquisition of capital stock of Arrow Carrier Corporation, containing terms and conditions upon which the said acquisition of control was authorized, has been cancelled by the parties thereto;

And it further appearing, That applicant is no longer desirous of exercising the authority granted with respect to acquisition of control and consolidation with Arrow Carrier Corporation, and by petition filed herein May 23, 1942, has requested that said order be modified accordingly:

It is ordered, That said petition be, and it is hereby, granted, and so much of said order of March 16, 1942, as authorizes applicant to acquire control of and consolidate with Arrow Carrier Corporation and to issue its capital stock for that purpose and for conversion of preferred stock so issued, be, and it is hereby, vacated and set aside.

And it is further ordered, That except as expressly modified herein said order of March 16, 1942, shall remain in full force and effect.

By the Commission.

W. P. BARTEL,  
*Secretary.*

[SEAL]

A true copy.

W. P. BARTEL,  
*Secretary.*

[SEAL]

89 In the District Court of the United States for the  
Southern District of New York

[Title omitted.]

*Objections of Interstate Commerce Commission made pursuant  
to provisions of urgent deficiencies act*

Comes now the Interstate Commerce Commission, one of the defendants in the above suit, and, in respect to the answer of the United States to the bill of complaint herein, says:

That, while this suit, being one to enjoin an order of the Commission, was brought against the United States as provided by the Urgent Deficiencies Act of October 22, 1913 (38 Stat. 210, 219; 28 U. S. C. Secs. 45, 45a, 46 and 47), it, the Commission, and other of the defendants named in the bill, are made party defendants as of right by the same Act (28 U. S. C. Sec. 45a); and that, while

the said answer of the United States confesses error in the order of the Commission and prays for entry of a decree enjoining and annulling the order, the Commission and the other said party defendants, having by their answers filed herein taken issue with the complaint and asked for its dismissal, have, and each of them has, the right to defend, and to continue to defend, the suit unaffected thereby, this by virtue of the express provision in said Act, that—

“the attorney general shall not dispose of or discontinue  
90 said suit or proceeding over the objection of such party or intervenor aforesaid, but said intervenor or intervenors may prosecute, defend, or continue said suit or proceeding unaffected by the action or nonaction of the Attorney General therein.” 28 U. S. C. sec. 45a; *Interstate Commerce Commission v. Oregon-Washington R. Co.*, 288 U. S. 14, 24-26.

The Commission, therefore, being desirous that its order be defended, hereby makes and sets up, under the above provision, its objection to the undefended disposal of, and, in effect, discontinuance of, the suit that would be effected by the answer of the United States, standing alone, and asserts its right and intention, to defend, and to continue to defend, the suit and the validity of its order.

INTERSTATE COMMERCE COMMISSION  
DANIEL W. KNOWLTON,

By Daniel W. Knowlton,

*Chief Counsel.*

91 [Duly sworn to by Claude R. Porter; jurat omitted in printing.]

92 In District Court of the United States for the Southern District of New York

[Title omitted.]

*Answer of the United States of America*

Comes now the United States of America, by its counsel, and for answer to the complaint herein says that the United States admits the allegations thereof and confesses error in the order of the Interstate Commerce Commission.

WHEREFORE, the United States of America prays the court that a decree be entered enjoining, annulling and setting aside the order of the Interstate Commerce Commission herein.

ARNE C. WIPRUD,  
Arne C. Wiprud,  
FRANK COLEMAN,  
Frank Coleman,  
WILLIAM R. KUEFFNER,  
William R. Kueffner,

*Special Assistants to the Attorney General.*

DAVID G. MACDONALD,  
David G. Macdonald,

*Special Attorney, Counsel for the United States.*

THURMAN ARNOLD,  
*Assistant Attorney General.*

MATHIAS F. CORREA,  
Mathias F. Correa,  
*United States Attorney.*

JULY 2, 1942.

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#### CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed to each party.

Dated at Washington, D. C., this 2nd day of July 1942.

A. C. WIPRUD.

94

In District Court of the United States for the Southern District of New York

[Title omitted.]

#### *Motion for leave to intervene as plaintiff*

Now comes the American Farm Bureau Federation, by its attorneys, and moves for leave to intervene as a plaintiff in this action in order to assert the grounds for complaint set forth in its proposed complaint, a copy of which is attached hereto, and respectfully alleges and shows as follows:

1. That the American Farm Bureau Federation is an association of farmers in forty (40) states of the United States, organized under the laws of Illinois, many of which are located in the Atlantic seaboard and the southern territory and are served by the motor carriers, parties to the proposed merger herein, or by their competitors.

2. That the purposes and functions, among others, of the American Farm Bureau Federation are to promote the interests of its members in the maintenance of low-cost transportation of farm products and farm supplies and to that end to support the national policy of effective competition in the transportation industry.

3. That the creation of a single motor carrier by the merger of eight of the largest common carriers of property by motor vehicle in the affected area, as proposed and authorized by the order of the Interstate Commerce Commission herein, will prevent the maintenance of free competition in the motor carrier transportation field in such area, and the recapitalization of such motor carriers, and the issuance and sale of their securities to the public, including a substantial stockholding in the merged motor lines by Kuhn, Loeb & Company, a banking and investment firm with an established history of affiliation with railroad companies, will result in the cartelization of motor vehicle and railroad transportation in the eastern United States, contrary to the National transportation policy.

4. That the members of the American Farm Bureau Federation in the area involved will be directly and adversely affected by such elimination of motor carrier competition and cartelization of motor vehicle and railroad transportation.

Therefore, petitioner prays that this court make an order granting leave to petitioner to intervene herein as a plaintiff and with leave to file the attached complaint herein pursuant to the authority contained in Section 212 of the Judicial Code (36 Stat. 1150; 28 U. S. C. 1940 ed. 45a).

PAUL E. MATHIAS,

Paul E. Mathias,

KIRKPATRICK, MATHIAS & MELOY

By PAUL E. MATHIAS,

Paul E. Mathias

*Attorneys for American Farm Bureau Federation.*

By ORRIN G. JUDD,

*Attorneys for American Farm Bureau Federation.*

#### NOTICE OF MOTION

KIRKPATRICK, MATHIAS & MELOY, 1240 Transportation Building, Chicago, Illinois, Wabash 7591.

DAVIES, AUERBACH, CORNELL & HARDY, One Wall Street, New York, New York.

TO: ATTORNEY GENERAL OF THE UNITED STATES, Washington, D. C.

To: SECRETARY OF AGRICULTURE OF THE UNITED STATES, Washington, D. C.

To: SECRETARY OF INTERSTATE COMMERCE COMMISSION, Washington, D. C.

To: THE TRANSPORT COMPANY, % Kuhn, Loeb & Company, New York, N. Y.

To: E. B. USSERY, Counsel for McLean Trucking Co., Inc., 919 Investment Bldg., Washington, D. C.

To: ARROW CARRIER CORPORATION, Park and Getty Avenue, Paterson, N. J.

To: KUHN, LOEB & COMPANY, New York, N. Y.

To: C. A. COCHRAN, MORTIMER A. SULLIVAN, HUGH M. JOSELOFF, 1775 Broadway, New York, N. Y., and NORDLINGER, RIEGELMAN, COOPER & BENETAR, 420 Lexington Ave., New York, N. Y., Attorneys for Defendants; ASSOCIATED TRANSPORT, INC.; BARNWELL BROTHERS, INCORPORATED; CONSOLIDATED MOTOR LINES, INCORPORATED; HORTON MOTOR LINES, INCORPORATED; MCCARTHY FREIGHT SYSTEM, INC.; M. MORAN TRANSPORTATION LINES, INC.; SOUTHEASTERN MOTOR LINES, INCORPORATED; TRANSPORTATION, INCORPORATED; BARNWELL WAREHOUSE & BROKERAGE COMPANY; BROWN EQUIPMENT & MANUFACTURING COMPANY; CONGER REALTY COMPANY; and SOUTHERN NEW ENGLAND TERMINALS, INC.

96 You and each of you are hereby notified that the undersigned will present the above and foregoing Motion to said Court on the day of the hearing in this cause.

KIRKPATRICK, MATHIAS & MELOY.

By PAUL E. MATHIAS,

Attorneys for American Farm Bureau Federation.

STATE OF ILLINOIS.

County of Cook, ss.

#### AFFIDAVIT OF SERVICE

Paul E. Mathias, being first duly sworn upon his oath, deposes and says that he is one of the attorneys for the American Farm Bureau Federation, upon whose behalf the foregoing Motion is made; that he has served a copy of the above and foregoing Notice and Motion upon all the parties affected thereby and of record in this action, by mailing a copy thereof, properly addressed, with postage prepaid, to each of said parties or their attorneys to whom said notice is addressed, this 10th day of August, 1942.

PAUL E. MATHIAS.  
Paul E. Mathias.

Subscribed and sworn to before me this 10th day of August, 1942.

[SEAL]

B. MEAGHER, *Notary Public.*

97

In the District Court of the United States  
for the Southern District of New York

[Title omitted.]

*Complaint*

1. The American Farm Bureau Federation, intervening plaintiff, is a corporation organized under the laws of the State of Illinois and is an association of farmers in forty states of the United States, many of which are located in the Atlantic seaboard and the southern territory and are served by the motor carriers, parties to the proposed merger herein, or by their competitors.

2. The American Farm Bureau Federation adopts by reference the Complaint of the original plaintiff, McLean Trucking Company, Inc., with the exception of paragraphs I and VIII thereof, and by way of further complaint states:

3. The intervening plaintiff adopts by reference the allegations of paragraphs 2, 3 and 4 of the proposed complaint of the Secretary of Agriculture of the United States.

4. The consummation of the proposed merger would result in the cartelization of motor vehicle common carrier and railroad transportation of property in the eastern United States.

98 5. The substantial elimination of competition between motor vehicle common carriers and the cartelization of such carriers and rail carriers would adversely affect the interests of the producers and consumers of agricultural commodities, including the members of the American Farm Bureau Federation located in the Atlantic seaboard area and the southern portion of the United States.

Wherefore, intervening plaintiff prays:

(a) That a decree be entered annulling and setting aside the existing order of the Interstate Commerce Commission, which order is reproduced as Exhibit "A" in the complaint of the original plaintiff, McLean Trucking Company, Inc.;

(b) That by such decree the corporate defendants, their officers and agents, be permanently enjoined and restrained from merging or attempting to merge said corporations pursuant to the authority granted in the order referred to above;

(c) That intervening plaintiff have such other and further relief in the premises as the nature of the case shall require and to this Court shall seem proper.

PAUL E. MATHIAS,

Paul E. Mathias,

KIRKPATRICK, MATHIAS & MELOY.

By PAUL E. MATHIAS,

Paul E. Mathias,

*Attorneys for American Farm Bureau Federation.*

KIRKPATRICK, MATHIAS & MELOY.

*1240 Transportation Building,*

*Chicago, Illinois, Wabash 7591.*

DAVIES, AUERBACH, CORNELL & HARDY.

*One Wall Street, New York, New York.*

By ORRIN G. JUDD,

*Attorneys for American Farm Bureau Federation.*

89 In the District Court of the United States for the Southern  
District of New York

[Title omitted.]

*Answer*

*To the honorable judges of the District Court of the United States  
for the Southern District of New York:*

Comes now the defendants above named except United States of America, Interstate Commerce Commission, Arrow Carrier Corporation, The Transport Company, and Kulm, Loeb & Company, and for their answer to the suit of the plaintiff allege and show:

### I

The allegations contained in paragraphs I and II of the complaint are admitted.

### II

The allegations contained in paragraph III of the complaint are admitted; this defendant, however, alleging that the extent of the operations of these answering defendants is correctly reflected in the record on file in the proceedings referred to in paragraph IV of plaintiff's complaint.

### III

The allegations contained in paragraph IV and V of plaintiff's complaint are admitted.

## IV

The allegation contained in paragraph VI of the complaint stating "the operations and business of plaintiff is competitive with the operations and business of certain of the aforesaid common carriers by motor vehicle to be merged into defendant Associated Transport, Inc." is admitted; all other allegations of the said paragraph, including the sub-sections thereof are specifically denied.

## V

The allegations contained in paragraphs VII and VIII, and any and all of the sub-sections thereof, are denied.

Wherefore, these defendants pray the court:

First, that the prayer of plaintiff be denied.

Second, that these defendants have such other and further relief in the premises as to this court shall seem proper.

C. A. COCHRAN,

MORTIMER A. SULLIVAN,

HUGH M. JOSELOFF,

*Attorneys for these answering defendants.*

*Mail address: 1775 Broadway, New York, New York.*

NORDLINGER, RIEGELMAN,

COOPER & BENETAR,

By DAVID L. BENETAR,

*Attorneys for these answering defendants.*

*Office & P. O. Address: 420 Lexington Avenue,*

*New York, New York.*

101 [Duly sworn to by B. M. Seymour; jurat omitted in printing.]

102 District Court of the United States for the Southern  
District of New York

[Title omitted.]

*Answer of Arrow Carrier Corporation*

Arrow Carrier Corporation, one of the defendants in the above entitled suit, by its attorney and solicitor Charles E. Cotterill, for answer to the complaint respectfully shows unto the court as follows:

## I

For lack of sufficient information this defendant can neither admit nor deny the allegations of Paragraph I of the complaint.

## II

The allegations of Paragraph II of the complaint are admitted.

## III

For lack of sufficient information this defendant can neither admit nor deny the allegations of Paragraph III of the complaint, except sub-section (b) thereof and the allegations of that sub-section are admitted.

## IV

The allegations of Paragraph IV of the complaint are admitted.

## V

The allegations of Paragraph V of the complaint are admitted.

## VI

The allegations of Paragraph VI of the complaint are denied.

## VII

The allegations of Paragraph VII of the complaint are denied.

## VIII

The allegations of Paragraph VIII of the complaint are denied.

## SEPARATE AND SPECIAL DEFENSES

For separate and special defenses this defendant further says:

Neither it nor its stockholders at any time entered into any agreement with Associated Transport, Inc. for the sale to or exchange of its stock with Associated Transport, Inc. In 1940 the then stockholders of this defendant entered into an agreement with The Transport Company, a Delaware corporation, concerning the sale of such Arrow Carrier Corporation stock to The Transport Company. This defendant is informed and believes, and therefore avers that during 1941 The Transport Company in its own name and behalf, entered into a certain agreement with Associated Transport, Inc. by which, with approval of the Commission,

103-A The Transport Company would have the privilege of exchanging Arrow Carrier Corporation stock for stock of Associated Transport, Inc. In the decision and order of the Interstate Commerce Commission which is the subject matter of this suit it was determined by the Commission that acquisition by Associated Transport, Inc. of complete ownership and control of Arrow Carrier Corporation, through exchange of stock in that way would be lawful; and the benefits of that finding and conclusion of the Commission remain. However, subsequently to such

decision and order of the Commission. Arrow Carrier Corporation and its stockholders were advised by The Transport Company that its contractual privilege of purchasing the stock of Arrow Carrier Corporation as had been agreed upon in 1940 would not be exercised; and this defendant is advised that The Transport Company so notified Associated Transport, Inc. This defendant is further advised and therefore alleges that after such decision of the Commission but prior to its denials of rehearing the Commission was notified that the agreement between Associated Transport, Inc. and The Transport Company concerning Arrow Carrier Corporation stock would not be consummated. This defendant is further informed and believes and therefore avers that all the stock of The Transport Company is owned either by the partnership as such or the individual members of the partnership of Kuhn-Loeb & Company of New York City but that such partnership has no interest, financial, contractual, or otherwise, in any corporation other than Arrow Carrier Corporation, with respect to which the involved order of the Commission would apply. Therefore this defendant says that while the Commission has determined acquisition of control of Arrow Carrier Corporation by 104 Associated Transport, Inc. would be consistent with the public interest as required by law the particular plan of acquisition presented to the Commission for approval has not been and will not be executed. As a consequence all questions raised or sought to be raised in the complaint concerning the relationship of Kuhn-Loeb & Company to the transaction before the Commission are moot.

WHEREFORE having fully answered the defendant Arrow Carrier Corporation respectfully prays that the complaint shall be dismissed without costs to this defendant and that it may have such other relief as the facts shown or to be shown shall require.

CHARLES E. COTTERILL,

By Charles E. Cotterill,

*Attorney for defendant, Arrow Carrier Corporation.*

*Address: 70 East 45th Street, New York, N. Y.*

Filed: New York, N. Y. May 27, 1942.

105 In the District Court of the United States for  
the Southern District of New York

[Title omitted.]

*Answer*

Defendants, Kuhn, Loeb & Co. and The Transport Company, by their attorneys, Cravath, de Gersdorff, Swaine & Wood, for their answer to the suit of the plaintiff:

## FOR A FIRST DEFENSE

1. State that said defendants are without knowledge or information sufficient to form a belief as to the truth of any of the averments of paragraph VI of the complaint except that they admit that "the operations and business of plaintiff is competitive with the operations and business of certain of the aforesaid common carriers by motor vehicle to be merged into defendant Associated Transport, Inc.";

2. Deny each and every averment of paragraph VII of the complaint;

3. State that said defendants are without knowledge or information sufficient to form a belief as to the truth of any of the averments of paragraph VIII of the complaint.

## FOR A SECOND DEFENSE, ALLEGE

4. The complaint, and each of the causes of action attempted to be stated therein, fails to state a claim against said defendants upon which relief can be granted.

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## FOR A THIRD DEFENSE, ALLEGE:

5. As alleged in subsection (j) of paragraph III of the complaint, defendant, The Transport Company, at the time of the filing of the application with the Interstate Commerce Commission referred to in the complaint, had an option to purchase all outstanding common stock of Arrow Carrier Corporation. As alleged in subdivision (k) of paragraph III of the complaint defendant, Kuhn, Loeb & Co., a partnership, owns all outstanding stock of defendant, The Transport Company. Prior to the entry of the report and final order of the Interstate Commerce Commission referred to in paragraph V of the complaint said option held by defendant, The Transport Company, in respect of common stock of Arrow Carrier Corporation expired. As indicated in said report and order of the Interstate Commerce Commission, the Interstate Commerce Commission was advised of the expiration of said option prior to the entry of said report and order.

6. Said option has not been renewed and subsequent to the entry of said report and order of the Interstate Commerce Commission the contract between The Transport Company and Associated Transport, Inc. providing for the sale by The Transport Company to Associated Transport, Inc. of stock of Arrow Carrier Corporation in consideration of the issue to The Transport Company of stock of Associated Transport, Inc. as provided in said

contract was terminated by mutual consent of the parties thereto. There is no existing contract, arrangement, or understanding between said defendants or either of them and any of the other defendants herein named in regard to Arrow Carrier Corporation or the stock of Arrow Carrier Corporation.

Wherefore these defendants pray that the complaint be dismissed as against these defendants, together with the costs and disbursements of this action.

Dated: New York, N. Y., May 29, 1942.

CRAVATH, DE GERSDORFF, SWAINE & WOOD,

By LEONARD D. ADHINE,

*A Member of the Firm, 15 Broad Street, New York, N. Y.*

*Attorneys for these answering defendants.*

108 In United States District Court for the Southern District of New York

Civil Action Nos. 18-116

MCLEAN TRUCKING COMPANY, INC., PLAINTIFF

v.

UNITED STATES OF AMERICA AND INTERSTATE  
COMMERCE COMMISSION, ET AL., DEFENDANTS

Before CHASE, C. J., WOOLSEY, and MANDELBAUM, D. JJ.

Action by the McLean Trucking Company, Inc., against the United States to enjoin and set aside an order of the Interstate Commerce Commission granting petitions for the authorization of the merger of certain interstate carriers by motor vehicle and the approval of the issuance of securities in connection therewith.

Davies, Auerbach, Cornell & Hardy, Attorneys for plaintiff; E. B. Ussery, Orrin G. Judd and Charles V. Guthrie, of counsel.

Thurman Arnold, Assistant Attorney General Arne C. Wiprud, William R. Kueffner, Charles S. Collier, Sp. Assistants to the Attorney General; John H. D. Wiggee, David G. MacDonald, Sp. Attorneys Mathias F. Correa, U. S. Attorney, for United States.

Daniel W. Kuowltan, Counsel for Interstate Commerce Commission.

Ralph F. Koebel, Attorney for Secretary of Agriculture.

Kirkpatrick, Mathias & Meloy, Attorneys for American Farm Bureau Federation.

109 Nordlinger, Riegelman, Cooper & Benetar, Attorneys for defendants, Mortimer A. Sullivan, of Counsel.

*Opinion*

CHASE, Circuit Judge:

This action was brought by the plaintiff, a common carrier by motor vehicle within part of the territory in which the defendant motor carriers, or some of them, operate, against the United States of America and the Interstate Commerce Commission, Associated Transport, Inc., Arrow Carrier Corporation, Barnwell Brothers Incorporated, Consolidated Motor Lines Incorporated, Horton Motor Lines Incorporated, McCarthy Freight System, Inc., M. Moran Transportation Lines, Inc., Southeastern Motor Lines Incorporated, Transportation Incorporated, The Transport Company, Kuhn Loeb & Company, Barnwell Warehouse & Brokerage Company, Brown Equipment & Manufacturing Company, Conger Realty Company, and Southern New England Terminals, Inc., under the Urgent Deficiencies Act (38 Stat. 129, 219; 28 U. S. C. A. Secs. 45 and 47a) to enjoin and set aside an order of the Interstate Commerce Commission which authorized the merger of the defendants who are carriers by motor vehicle and the issuance of securities in connection therewith. It was heard by a court of three judges pursuant to the statute.

The principal issues are (1) whether the findings of the Commission are supported by the evidence and (2) if so, whether the Commission's order was erroneous because it resolved the questions presented by the standard of what it determined  
110 was adequate transportation facilities in the public interest under the criteria prescribed in the Interstate Commerce Act without deciding that its order would not result in a consolidation that would violate the provisions of either the Sherman or the Clayton Act, as those acts have been construed generally.

The proceedings before the Commission were instituted by Associated Transport, Inc., a Delaware corporation which was organized for the purpose of bringing about the proposed merger and which was not then engaged in the transportation business. The carriers by motor vehicle it was proposed to merge operated as common carriers on regular routes and one or more of them served communities in Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, Ohio, New Jersey, Delaware, Maryland, the District of Columbia, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, and Louisiana.

There were two petitions which were consolidated for hearing. The first was by Associated Transport, Inc., for authority under Sec. 5 of the Interstate Commerce Act (1) to obtain control through the purchase of their capital stock of the following eight common carriers by motor vehicle: Arrow Carrier Corporation, Paterson,

N. J.; Barnwell Brothers Incorporated, Burlington, N. C.; Consolidated Motor Lines Incorporated, Hartford, Conn.; Horton Motor Lines Incorporated, Charlotte, N. C.; McCarthy Freight System, Inc., Taunton, Mass.; M. Moran Transportation Lines, Inc., Buffalo, N. Y.; Southeastern Motor Lines Incorporated, 111 Bristol, Va., and Transportation Incorporated, Atlanta, Ga., and (2) to consolidate into a unit for operation by itself the properties and rights to operate of the named carriers within one year from the date it should acquire the control of them. The second application was for authority to issue preferred and common stock to obtain funds needed to acquire the control of the named carriers and four associated noncarriers, viz, Barnwell Warehouse & Brokerage Company, Burlington, N. C.; Brown Equipment & Manufacturing Company, Charlotte, N. C.; Conger Realty Company, Charlotte, N. C., and Southern New England Terminals, Inc., Taunton, Mass.

The Antitrust Division of the Department of Justice, the Secretary of Agriculture, four fruit growers associations and Super Service Freight Company, a common carrier by motor vehicle, intervened and opposed the applications. There were other intervenors who, however, stood indifferent except the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America which at the close of the hearings supported the applications.

A previous application by another petitioner for authority to unify by means of a holding company set-up twenty-nine common carriers by motor vehicle which included the eight already named had been denied and these applications were the result of the desire of the petitioner and the eight operators involved to avoid the defects in the first application which had led to its denial largely on the ground that the then proposed unification was not economical in that it would permit two or more carriers under 112 common control to engage in duplication of service over most of the routes in the greater part of the territory affected.

In the instant proceedings there were extensive hearings before an examiner at which a large amount of evidence was introduced. After his proposed report was duly served on the parties the intervenors who opposed the applications filed objections which were argued before the Commission which after due consideration made the order now under attack.

The Commission made findings on what the record shows was adequate supporting evidence that the proposed consolidation would bring about economies and greater efficiency in operation; improvement in service; leave ample competitive motor vehicle carrier service in the territory affected; and be in the public interest within Sec. 5 of the Interstate Commerce Act.

After the suit was brought and the answer of the Commission was filed it was amended to allege, what is now undisputed, that because of the failure to carry through negotiations for the acquisition of the stock of the Arrow Carrier Corporation the applicant petitioned the Commission for a modification of its order to exclude that carrier from the merger authorized and that was done by order entered June 8, 1942. All phases of this controversy which resulted from the inclusion of Arrow in the authorized consolidation are, therefore, eliminated and we will proceed as though Arrow had never been a party.

The United States answered by confessing error and praying for a decree setting aside the Commission's order. The  
 113 other defendants answered joining issue and praying that the complaint be dismissed. Their right so to do was not affected by the confession of error by the United States and the issues thus raised are still open. 28 U. S. C. A. sec. 45 (a); Interstate Commerce Commission v. Oregon-Washington R. R. Co. 288 U. S. 14.

As we have found that the evidence was sufficient to support the findings of the Commission our further review must be confined to determining whether the order is in conformity to the applicable law. *Virginian Ry. v. United States*, 272 U. S. 658; *Assigned Car Cases*, 274 U. S. 564; *Oregon-Washington R. & Nav. Co. v. United States*, 47 F. (2) 250. It follows, of course, that the remaining question is whether the findings provide adequate support for the order even though they do not negative the possibility that the merger will not be in accord with all the provisions of the antitrust statutes as they have been construed.

Considerable light will be thrown on this problem at once by noticing the plain fact that while the Antitrust Acts and the Interstate Commerce Act are designed to bring about the conduct of business for the common good the former are also penal and are aimed at the evils of monopolies as such which unreasonably restrain trade or business while the latter, though it does not disregard such evils, is primarily concerned with creation and maintenance of adequate transportation service to the public. Providing such adequate service comes, of course, within the realm of  
 114 trade or business and it is self-evident that the consolidation of the instrumentalities by which it is accomplished may create monopolies and consequent restraints which would be unreasonable, and therefore unlawful, if the antitrust laws are given paramount effect in every instance. We think it equally obvious that there may at times be at least an apparent conflict in the administration of these statutes. What will best serve the public interest by way of adequate transportation facilities may not leave the business so free from restraint due to

monopoly that it can justly be said that such restraint would be unreasonable were elimination of that the primary objective. It may be that reasonableness is a term sufficiently elastic, since it is dependent upon all the relevant circumstances in each instance, that the proper satisfaction of the need for adequate public transportation service would in and of itself prevent what incidental restraint of trade flowed from it from being unreasonable. We need not so decide now on broad principles, however, for we think Congress has made it plain in sec. 5 (11) of the Interstate Commerce Act [49 U. S. C. A. § 58] that it recognized the inherent possibility that orders by the Commission made within its powers and in discharge of its duty to further the creation and maintenance of transportation facilities in the public interest under the Act might not always be outside the field of restraints made unlawful by the antitrust statutes as construed in respect to restraint of commerce per se.

"Sec. 5 of Title 49 U. S. C. A. provides that:

115 "The carriers affected by any order made under the foregoing provisions of this section and any corporation organized to effect a consolidation approved and authorized in such order are received from the operation of the 'antitrust laws,' as designated in section 12 of Title 15, Commerce and Trade, and of all other restraints or prohibitions by law, State, or Federal, insofar as may be necessary to enable them to do anything authorized or required by any order made under and pursuant to the foregoing provisions of this section."

The import of this is that the Commission, when acting with due regard for the public interest, which certainly requires it when passing upon proposed consolidations of carriers to give adequate consideration to such features as the maintenance of desirable competition and avoidance of hampering restraints, may, and should, be guided by the scope and purpose of the Interstate Commerce Act and that if, as it has in this instance, it has properly interpreted that statute and applied it correctly to the facts proved and found its order is valid. The provision that those who act in reliance upon and in conformity to such an order are not subject to the provisions of the antitrust laws designated, or to "other restraints or prohibitions by law" makes that conclusion inescapable.

That the Commission had the authority under the Interstate Commerce Act to enter the order it made on adequate evidence and in furtherance of the public interest cannot be doubted.

Public interest is a proper standard in that it embraces in respect to public transportation service which is adequate, economical, efficient, necessary, and therefore appropriate to serve the public need. *New York Securities Corp. v. United States*, 287 U. S. 12. Such changes in the Transportation Act of 1920 as were brought about by the Emergency Railroad Transportation Act of 1933 kept this standard of action fully applicable. *Texas v. United States*, 292 U. S. 522. The Motor Carrier Act of 1935 and the Transportation Act of 1940 applied like principles to the regulation of common carriers by motor vehicle.

What is needed for adequate service is a matter for the Commission to decide and it is likewise free to decide what amount of competition is in furtherance of the public interest and what is not. It is not bound to preserve or foster competition to a degree that will not best serve the public interest from the standpoint of adequate public transportation service and whether competition as such is adequate or not must depend upon its effect in furtherance of the attainment of the ends Congress sought to accomplish under the Interstate Commerce Act administered by the Commission.

Nor does the fact that after this consolidation there will be no other one carrier by motor vehicle in competition with the applicant throughout the whole territory it serves prevent the making of the order. That is of course a factor to be considered, as it was, by the Commission in determining what is in the public interest just as are all the other pertinent factors and is to be given such weight in its final decision as the Commission, in its informed judgment and with due regard for all the evidence decides it should have. We cannot review the weight of the evidence or the wisdom of the order. *New England Divisions Case*, 261 U. S. 184, 204.

The order authorizing the issuance of securities required to finance the consolidation was also based on adequate findings amply supported by the evidence. It follows that that order is likewise to be given effect.

Injunction denied and complaint dismissed.

HARRIE B. CHASE,

*U. S. Circuit Judge.*

WOOLSEY,

SAMUEL MANDELBAUM,

*U. S. District Judges.*

Dated Dec. 8, 1942.

In United States District Court for the Southern District of  
New York

D Civil Action Nos. 18-116

MCLEAN TRUCKING COMPANY, INC., PLAINTIFF

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,  
ET AL., DEFENDANTS

Before CHASE, C. J., and WOOLSEY, and MANDELBAUM, D. JJ.

*Findings of facts*

1. This case was heard on the pleadings and on the record of the proceedings before the Interstate Commerce Commission; its findings and decision thereon.

118 2. The plaintiff is a common carrier by motor vehicle in competition with one or more of the defendant common carriers by motor vehicle in part of the territory involved.

3. The facts found and reported by the Commission were based on substantial evidence and are adopted as the facts by this court.

CONCLUSIONS OF LAW

1. The order approving the proposed consolidation was made by the Commission in accordance with the facts and the applicable law and is valid.

2. The order approving the proposed issuance of securities in furtherance of the consolidation was made by the Commission in accordance with the facts and the applicable law and is valid.

3. The injunction should be denied and the complaint dismissed.

HARRIE B. CHASE,

*U. S. Circuit Judge.*

WOOLSEY,

SAMUEL MANDELBAUM,

*U. S. District Judges.*

Dated Dec. 8, 1942.

119

United States District Court for the Southern  
District of New York

Civil Action Nos. 18-116

McLEAN TRUCKING COMPANY, INC., PLAINTIFF

against

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE  
COMMISSION ET AL., DEFENDANTS*Final decree*

This cause having come on for final hearing by the special court of three judges, constituted as required by the Act of October 22, 1913, (c. 32, 38 Stat. 219; U. S. C., Tit. 28, sec. 47) and the court, upon consideration of the evidence and the arguments of counsel orally and on brief, having concluded, found and determined, for the reasons set forth in the opinion heretofore filed by this court herein that the injunction prayed for should be denied and the complaint dismissed, it is

Ordered, adjudged, and decreed, that the injunction prayed for in the bill of complaint be, and the same is hereby denied, and the bill of complaint is hereby dismissed at the plaintiff's costs.

This 24th day of December 1942.

HARRIE B. CHASE,

*United States Circuit Judge.*

JOHN M. WOOLSEY,

*United States District Judge.*

SAMUEL MANDELBAUM,

*United States District Judge.*120 In the District Court of the United States for the  
Southern District of New York

[Title omitted.]

*Petition for appeal*

McLean Trucking Company, Inc., plaintiff, The Secretary of Agriculture of the United States and American Farm Bureau Federation, intervening plaintiffs, in the above-entitled cause, considering themselves aggrieved by the final decree of this Court entered on the 28th day of December 1942, hereby pray an appeal from said final decree to the Supreme Court of the United States. Pursuant to paragraph 1 of Rule 12 of the Rules of the Supreme Court of the United States said plaintiffs present to this Court

herewith a statement showing the basis of jurisdiction of the Supreme Court to review the said final decree.

The particulars wherein said plaintiffs consider the decree erroneous are set forth in the assignments of error and prayer for reversal accompanying this petition and to which reference is hereby made.

Said plaintiffs pray that their appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said final  
121 decree was based, duly authenticated, be transmitted to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

E. B. USSERY,

E. B. USSERY,

*Counsel for McLean-Trucking Company, Inc.*

ROBERT H. SHIELDS,

Robert H. Shields,

*Solicitor of the United States Department of Agriculture.*

*Counsel for the Secretary of Agriculture of the United States.*

KIRKPATRICK, MATHIAS & MELOY,

By PAUL E. MATHIAS,

Kirkpatrick, Mathias & Meloy,

*Counsel for American Farm Bureau Federation.*

122 In the District Court of the United States for the Southern District of New York

[Title omitted.]

*Order allowing appeal*

In the above-entitled cause, McLean Trucking Company, Inc., plaintiff, The Secretary of Agriculture of the United States and American Farm Bureau Federation, intervening plaintiffs, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of this Court in this cause entered on the 28th day of December, 1942, and having also made and filed their assignments of error and prayer for reversal, and statement of jurisdiction, and having in all respects conformed to the statutes and rules of court in such cases made and provided,

It is therefore ordered and adjudged that the appeal be and the same is hereby allowed as prayed for.

WOOLSEY

*United States District Judge.*

This 23rd day of February 1943.

123 In the District Court of the United States for the Southern  
District of New York

[Title omitted.]

*Assignments of error and prayer for reversal*

McLean Trucking Company, Inc., plaintiff, The Secretary of Agriculture of the United States, and American Farm Bureau Federation, intervening plaintiffs, in connection with their petition for an appeal to the Supreme Court of the United States, hereby assign error to the record and proceedings and to the entry of the final decree of the said District Court on December 28, 1942, in the above-entitled cause, and say that in the entry of the said final decree the said District Court committed material error to the prejudice of the said plaintiffs in the following particulars:

1. The Court erred in holding that the facts found and reported by the Commission were based on substantial evidence, and in adopting as its own findings of fact those made by the Commission.

2. The Court erred in holding that the order approving the proposed merger was made by the Commission in accordance with the facts and the applicable law and is valid.

3. The Court erred in holding that the order approving the proposed issuance of securities in furtherance of the merger  
124 was made by the Commission in accordance with the facts and applicable law and is valid.

4. The Court erred in holding that the injunction should be denied and the complaint dismissed.

5. The Court erred in entering its decree of December 28, 1942.

6. The Court erred in construing as it did the provisions of Section 5 of the Interstate Commerce Act, as amended.

7. The Court erred in failing to hold that the Commission can not enter an order approving a merger of motor carriers which involves the elimination of substantial competition except upon a finding that existing motor carrier services are inadequate.

8. The Court erred in holding that the order of the Commission was valid, notwithstanding the Commission's failure to make a finding that existing motor carrier services are inadequate.

9. The Court erred in holding that the standards and criteria to be applied by the Commission under the Transportation Act of 1940 in determining whether a merger of motor carriers should be approved are the same as the standards and criteria which were applicable to the merger of rail carriers under the Transportation Act of 1920.

10. The Court erred in holding that the Commission's order was valid, notwithstanding the fact that the order was based upon findings made pursuant to the standards and criteria prescribed by the Transportation Act of 1920 with respect to merger of rail carriers instead of the standards and criteria prescribed by the Transportation Act of 1940 with respect to merger of motor carriers.

11. The Court erred in holding that it would consider the case as if the inclusion of Arrow Carrier Corporation in the proposed merger had never been contemplated and as though Arrow  
125 had never been a party in holding that all phases of the controversy which resulted from the inclusion of Arrow are eliminated from the case.

12. The Court erred in that it did not consider and determine the important public questions under the proviso of Section 5 (2) (b) of the Interstate Commerce Act arising from the facts with respect to the relationship between Arrow Carrier Corporation, Kuhn, Loeb & Company, Transport Company, Inc., and Associated Transport, Inc.

13. The Court erred in holding that the order of the Commission was valid, notwithstanding the fact that the Commission did not apply the proviso of Section 5 (2) (b) and did not make findings with respect to the use of motor vehicle service to public advantage by a carrier by railroad and with respect to undue restraint of competition.

14. The Court erred in holding that the order of the Commission was valid, notwithstanding the fact that the Commission in finding whether the proposed transaction "will be consistent with the public interest" did not consider the effect of the proposed transaction in the light of the provisions and policies of the anti-trust laws, as well as the effect of the proposed transaction upon adequate transportation service to the public and the preservation of the inherent advantages of motor carrier transportation.

15. The Court erred in holding that the order of the Commission was valid, notwithstanding the fact that the Commission did not consider and give weight to the provisions and policies of the antitrust laws, although the terms of Section 5 (11) of the Interstate Commerce Act do not dispense with the necessity of  
126 due consideration by the Commission, in determining whether the proposed transaction "will be consistent with the public interest," of the provisions and policies embodied in the antitrust laws and other statutory provisions and policies established by the Congress.

Wherefore the said plaintiffs respectfully pray that the final decree of the District Court in this cause entered on December 28, 1942, may be reversed, and for such other and appropriate relief as to the Court may seem just and proper.

E. B. USSERY,

E. B. USSERY,

*Counsel for McLean Trucking Company, Inc.*

ROBERT H. SHIELDS,

*Solicitor of the United States Department of Agriculture,*

*Counsel for the Secretary of Agriculture of the United States.*

KIRKPATRICK, MATHIAS & MELOY,

Kirkpatrick, Mathias & Meloy,

By Kirkpatrick, Mathias & Meloy.

*Counsel for American Farm Bureau Federation.*

127 In the District Court of the United States for  
the Southern District of New York

[Title omitted.]

*Notice of appeal*

To: The Attorney General for the State of New York.

You are hereby notified that the District Court of the United States for the Southern District of New York, on February 23rd, 1943, filed and entered an order allowing an appeal by McLean Trucking Company, Inc., plaintiff. The Secretary of Agriculture of the United States and American Farm Bureau Federation, intervening plaintiffs, to the Supreme Court of the United States from a decree filed and entered on the 28th day of December 1942 in the above-entitled cause, and that the citation signed by such court on February 23rd, 1943, in connection with the order allowing such appeal is made returnable within 40 days from the date of the signing of such citation.

Attached hereto are copies of each of the following documents: the citation referred to above, the petition for and the order allowing said appeal, plaintiffs jurisdictional statement pursuant to Rule 12 of the revised Rules of the Supreme Court of the United States, the statement required to be served on ap-  
128 pellee by said Rule 12, assignments of error and prayer for reversal, proof of service and praecipe.

This notice is given to you pursuant to the provisions of U. S. C. Title 28, Sec. 47 a, Act of March 3, 1911, c. 231, Sec. 210, 36 Stat.

1150, as amended by the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 219, 220.

E. B. USSERY,

E. B. Ussery,

*Counsel for McLean Trucking Company, Inc.*

ROBERT H. SHIELDS,

Robert H. Shields,

*Solicitor of the United States Department of Agriculture,*

*Counsel for the Secretary of Agriculture of the United States.*

KIRKPATRICK, MATHIAS & MELOY,

By PAUL E. MATHIAS,

Kirkpatrick, Mathias & Meloy.

*Counsel for American Farm Bureau Federation.*

This 23rd day of February 1943.

#### ADMISSION OF SERVICE

Received a copy of the foregoing notice this \_\_\_\_\_ day of February 1943.

*Attorney General for the State of New York:*

129 In the District Court of the United States for the Southern District of New York

[Title omitted.]

#### *Proof of service*

Service of the petition for appeal, order allowing appeal, assignments of error and prayer for reversal, statement as to jurisdiction with opinion attached, praecipe, and citation in the above-entitled cause, together with a statement directing attention to the provisions of paragraph 2 of Rule 12 of the Rules of the Supreme Court of the United States, is accepted and copies received this 23rd day of February 1943.

ARNE C. WIPRUD,

*Special Assistant to the Attorney General,*

*Counsel for United States of America.*

DANIEL W. KNOWLTON,

*Chief Counsel, Interstate Commerce Commission,*

*Counsel for Interstate Commerce Commission.*

130 Copy of aforesaid documents received.

NORDLINGER, REIGELMAN, COOPER & BENETAR,

Nordlinger, Reigelman, Cooper & Benetar

By A. H. Nordlinger

*Counsel for Associated Transport, Inc., Barnwell Brothers, Incorporated, Consolidated Motor Lines, Incorporated, Horton Motor Lines, Incorporated, McCarthy Freight System, Inc., M. Moran Transportation Lines, Inc., Southeastern Motor Lines, Incorporated, Transportation, Incorporated, Barnwell Warehouse & Brokerage Company, Brown Equipment & Manufacturing Company, Conger Realty Company, and Southern New England Terminals, Inc.*

ARROW CARRIER CORPORATION

Arrow Carrier Corporation

By E. N. PIRNOT, Agent.

THE TRANSPORT COMPANY

The Transport Company

KUHN-LOEB & COMPANY

By P. M. STEWART,

KUHN, LOEB & COMPANY

Kuhn, Loeb & Company

By R. F. BROWN.

131 In the District Court of the United States for the Southern District of New York

[Title omitted.]

*Præcipe*

*To the clerk of the District Court of the United States for the Southern District of New York:*

Please prepare a transcript of the record in the above-entitled cause in the matter of the appeal herein and include in said transcript in the order given below the following papers, viz.,

1. Bill of complaint, verified May 1, 1942, filed May 6, 1942, including Exhibits attached thereto.

2. Petition of intervention and complaint of the Secretary of Agriculture of the United States served May 19, 1942.

3. Answer of Interstate Commerce Commission verified May 20, 1942.

4. Amendment to answer of Interstate Commerce Commission verified June 17, 1942, including Exhibits attached thereto.

5. Answer of the United States of America confessing error, dated July 2, 1942.

132 6. Objections of Interstate Commerce Commission made pursuant to provisions of Urgent Deficiencies Act, served July 6, 1942.

7. Motion for leave to intervent and complaint of American Farm Bureau Federation, served August 10, 1942.

8. Answer of Associated Transport, Inc., et al., verified May 26, 1942.

9. Testimony offered at the trial, October 8, 1942, including certified record made before the Interstate Commerce Commission.

10. Final decree filed December 28, 1942.

11. Opinion of the District Court, dated December 8, 1942, together with the Court's Findings of Fact and Conclusions of Law.

12. Petition for appeal.

13. Order allowing appeal.

14. Assignments of error and prayer for reversal.

15. Statement as to jurisdiction.

16. Statement required by paragraph 2 of Rule 12 of the Rules of the Supreme Court of the United States.

17. Citation.

18. Proof of Service.

19. Notice of Appeal to the Attorney General of the State of New York.

20. Praecipe.

E. B. USSERY,

E. B. Ussery,

*Counsel for McLean Trucking Company, Inc.*

ROBERT H. SHIELDS,

Robert H. Shields,

*Solicitor of the United States Department of Agriculture,*

*Counsel for the Secretary of Agriculture*

*of the United States.*

KIRKPATRICK, MATHIAS & MELOY,

By PAUL E. MATHIAS,

Kirkpatrick, Mathias & Meloy.

*Counsel for American Farm Bureau Federation.*

This 23rd day of February 1943.

133 In District Court of the United States for the Southern  
District of New York

[Citation in usual form omitted in printing.]

135 [Clerk's Certificate to foregoing transcript omitted in  
printing.]

137 In United States District Court, Southern District of New York

Civ. 18-116

MCLEAN TRUCKING COMPANY, INC., PLAINTIFF

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,  
ET AL., DEFENDANTS

*Statement of evidence*

Before Hon. HARRIE B. CHASE, C. J., Hon. JOHN M. WOOLSEY,  
D. J., Hon. SAMUEL MANDELBAUM, D. J.

NEW YORK, October 8, 1942, 2:30 p. m.

*Appearances*

Davies, Auerbach, Cornell & Hardy, Esqrs., Attorneys for Plaintiff; Orrin G. Judd, Esq., and E. B. Ussery, Esq., of Counsel. Thurman Arnold, Esq., Assistant Attorney General of the United States, for the Government; Thurman Arnold, Esq., and A. C. Wiprud, Esq., Special Assistant to the Attorney General, of Counsel.—Daniel W. Knowlton, Esq., Chief Counsel, Attorney for Interstate Commerce Commission. Ralph F. Koebel, Esq., 138 Attorney for Secretary of Agriculture. Kirkpatrick, Mathias & Meloy, Esqrs., Attorneys for American Farm Labor Bureau; Paul E. Mathias, Esq., of Counsel. Nordlinger, Riegelman, Cooper & Benetar, Esqrs., Attorneys for Defendants; Mortimer A. Sullivan, Esq., of Counsel.

139

*Colloquy*

Mr. JUDD. May it please the Court, this is a suit under the Urgent Deficiencies Act to set aside several orders of the Interstate Commerce Commission approving a merger of trucking companies, under Section 5 of the Interstate Commerce Act, which forms the largest trucking combine in the United States. I have prepared for the Court a set of the marked pleadings, the complaint, the answers of the various parties, and two motions to intervene.

The United States of America, which is the primary defendant in such a suit, confesses error and admits that the order of the Interstate Commerce Commission was erroneously entered and should be annulled. I think some of the parties before the Commission and possibly the Commission itself may take a different

attitude. But the United States agrees with the contentions of the plaintiff in this action. There are two motions, as set, to intervene, one by the American Farm Bureau Federation, and one by the Department of Agriculture, and I think it might be appropriate that those be heard first.

Judge CHASE. Probably.

Mr. JUDD. And if it is necessary, I should like to move this Court for the admission for this case of my Washington associate, and of the counsel for the American Farm Bureau Federation, a Chicago attorney.

Judge CHASE. We would be very glad to hear them. I suppose they are not attorneys of record, and if they are not attorneys of record they won't have to be admitted. We can hear them as a matter of courtesy.

Mr. JUDD. In a sense they are attorneys of record, but I am designated as the New York representative to receive pleadings from both of them, and I take it it is not necessary to make any motion for the admission of the representatives of the United States Government from Washington.

Judge CHASE. We will hear the motions to intervene, then. Is there any opposition to those motions? Does anyone oppose?

(No response.)

Mr. KOEBEL. I appear on behalf of the Secretary of Agriculture, your Honor.

Judge CHASE. You wish to intervene?

Mr. KOEBEL. Yes.

Judge CHASE. Now is there anyone opposing the motions to intervene?

(No response.)

We will grant those motions as a matter of course.

Mr. KNOWLTON. If the Court please, with respect to the answer of the United States, confessing error and asking for dismissal of the order, at the time the answer was filed, I filed a paper marked objections, pursuant to the Urgent Deficiencies Act, which were objections simply to the case being disposed of on that answer, because the statute gives the Commission and other parties intervening express right to continue the defense in the event the Attorney General should drop out.

Judge CHASE. For whom do you appear?

Mr. KNOWLTON. Interstate Commerce Commission, sir.

Judge CHASE. Now who is to be heard first?

Mr. JUDD. I am prepared to argue first on behalf of the plaintiff if it is agreeable to the Court and the other parties.

Judge CHASE. Well, go ahead. I do not know how much time this will take. We will take as much time as necessary, but we want to get through this afternoon.

Mr. JUDD. I will have to condense my argument considerably to do that. I think it would take pretty nearly an hour to outline the facts, which are fairly complicated, and the law. I think that Mr. Arnold has some argument.

Mr. ARNOLD. If it would not be unduly burdensome, Mr. Wiprud and I would like to have an hour and a half.

Judge CHASE. Well, we will give you whatever time is necessary, of course. Now, how many expect to be heard?

142 Mr. ARNOLD. Myself and Mr. Wiprud on behalf of the United States.

Mr. JUDD. Mr. Ussery may have some part in the argument.

Mr. KOEREL. Your Honors, the Secretary of Agriculture presents no argument. We will file a brief.

Mr. MATHIAS. On behalf of the American Farm Bureau Federation, we have no argument, but we would like to file a brief.

Judge CHASE. Suppose we did something like this: let the plaintiff have an hour and a half and let the rest of you have an hour and a half, and divide it up as you please, or perhaps we had better make it two hours. Each side can have two hours. You can divide the time up as you like. All right, let us begin.

*Offers in evidence*

Mr. JUDD. I think the first step is the introduction of the record before the Interstate Commerce Commission. I have here a certified copy of papers beginning with the application and running through the orders, exclusive of the transcript, certified by the Secretary of the Interstate Commerce Commission. I have a list of all those papers which I would like to hand to the Court, listing both the papers that were filed in the Interstate Commerce Commission and the exhibits. (Marked "Plaintiff's Exhibit 1.")

143 Mr. JUDD. I have briefs which outline the significant parts, and I do not know whether the defendants are ready to exchange briefs at this time, but I think it might be helpful if I give those to your Honors so that you can follow the parts of the argument and the statutes.

Judge CHASE. All right.

Mr. KNOWLTON. I have not made up my mind whether to file a brief yet. If the Courts please, the division of time of two hours per side, the United States being a defendant which has confessed error and presumably is going to argue for the plaintiff, I assume his time will be in the two hours for the plaintiff?

Judge CHASE. I had not thought of that, but apparently it ought to be, ought it not? I think it ought to be so.

Mr. JUDD. Next is the transcript of testimony before the Interstate Commerce Commission, which will be Exhibit 2.

Judge WOOLSEY. What was the first?

Mr. JUDD. The first was the pleadings in the Interstate Commerce Commission, together with the brief and the proposed report, and the final report. (Marked "Plaintiff's Exhibit 2.")

Mr. JUDD. The next is the exhibits which were  
144 offered in the Interstate Commerce Commission. (Marked "Plaintiff's Exhibit 3.")

Mr. JUDD. That completes the records on which this Court should act, as far as I know. The pleadings are more or less formal in the action, and there is no denial of any material allegations of the pleadings.

Judge CHASE. Now may we take that as a completion of the record?

Mr. JUDD. I have one more thing that I have omitted. Subsequent to the act of the Interstate Commerce Commission embraced in that record, there was an order granting leave to this merged company to sell some of its stock to equipment and tire companies, of which we have a certified copy, and we would like to offer that in evidence as bearing on the issues. (Marked "Plaintiff's Exhibit 4.")

Judge CHASE. Now, does any party have anything to offer as a part of the record?

(No response.)

145

*Plaintiff's Exhibit 1*

Before the Interstate Commerce Commission

APPLICATION OF ASSOCIATED TRANSPORT, INC. FOR THE ACQUISITION,  
BY EXCHANGE OF STOCK, OF CONTROL OF CERTAIN MOTOR CAR  
RIERS, AND FOR THE CONSOLIDATION THEREOF.

Filed July 25, 1941

Docket No. BMC-F-1612

146

APPLICATION FOR AUTHORITY UNDER SECTION 5, INTERSTATE  
COMMERCE ACT, TO ACQUIRE CONTROL OF A MOTOR CAR  
RIER OR MOTOR CARRIERS THROUGH OWNERSHIP OF STOCK  
OR OTHERWISE, AND TO CONSOLIDATE OR MERGE THE PROP-  
ERTIES OR FRANCHISES OR ANY PART THEREOF, OF A MOTOR  
CARRIER, OR TO PURCHASE, LEASE, OR CONTRACT TO OPER-  
ATE THE PROPERTIES, OR ANY PART THEREOF, OF A MOTOR  
CARRIER

## Docket No. MC-F —

*To the Interstate Commerce Commission, Washington, D. C.:*

## APPLICANT REPRESENTS

## I. That this is an application of

**Associated Transport, Inc.**

(State full and correct name of person seeking to acquire control)

**Corporation**

(State whether corporation, partnership, individual, trustee, receiver, or assignee)

**Neither**

(State whether a rail, express, motor, or water carrier)

doing business as **Associated Transport, Inc.**

**Business address 1775 Broadway, New York, New York,**

(Number and street)

(City)

(County)

**New York.**

(State)

that information respecting said person is set forth in Exhibit A, attached hereto and made a part hereof, that this is an application

(1) to acquire control of Horton Motor Lines, Inc., 1001 Clarkson St., Charlotte, N. C.; Barnwell Bros., Inc., Hawking St., Burlington, N. C.; Southeastern Motor Lines, Inc., Commonwealth Ave., Bristol, Va.; Transportation, Inc., 75 Ivy St., N. E., Atlanta, Ga.; McCarthy Freight System, Inc., Olney & Wales St., Taunton, Mass.; Consolidated Motor Lines, Inc., 1179 Main St., Hartford, Conn.; M. Moran Transportation Lines, Inc., 22 Roosevelt St., Buffalo, N. Y.; and Arrow Carrier Corporation, Park St. & Getty Ave., Paterson, N. J., through ownership of capital stock, and

(2) if the control of the aforesaid companies through ownership by applicant of their capital stock be approved and authorized, then and in that event present approval and authority to consolidate the aforesaid companies with the applicant so that applicant will be the sole operating company, owning all of the assets, including operating rights, and assuming all of the liabilities of each of the aforesaid companies, and said consolidation to be fully accomplished within one year from date of acquisition of stock control.

II. That information respecting said motor carriers of which control is proposed is set forth in Exhibits B, B-1, etc.

147 III. That the motor-vehicle equipment owned, leased, controlled or normally operated by applicant (if a motor carrier), and the motor carriers of which control is proposed to be

acquired during the six-month period immediately preceding the filing of this application, was:

	Applicant	Motor carrier proposed to be controlled	Motor carrier proposed to be controlled	Total
Busses	-----	-----	-----	-----
Trucks	-----	-----	-----	-----
Tractors (Set forth in Exhibit E, attached hereto and made a part hereof.)				
Semi-Trailers	-----	-----	-----	-----
Full Trailers	-----	-----	-----	-----
Pole Trailers	-----	-----	-----	-----
Other	-----	-----	-----	-----
Total	-----	-----	-----	-----

IV. That information respecting the nature of the transaction proposed and the terms and conditions thereof, is set forth in Exhibit C, attached hereto and made a part hereof.

V. Since applicant is not a motor carrier and is a person other than a carrier by railroad subject to Part I, Interstate Commerce Act, or a person controlled by such carrier, within the meaning of section 1 (3) (b), or affiliated therewith within the meaning of section 5 (6) there are set forth in Exhibit D, facts and circumstances to establish that the transaction proposed will be consistent with the public interest.

VI. That applicant will submit such additional information as the Commission may require.

VII. That the person to whom correspondence with respect to this application should be addressed is as follows: Burge M. Seymour, President, Associated Transport, Inc., 1775 Broadway, New York, New York.

Wherefore, applicant prays that the Interstate Commerce Commission enter an order approving and authorizing the transaction proposed; and applicant further prays that if approval and authorization of the transaction proposed contemplate the transfer of motor carrier operating authority, the Commission take necessary action to effect such transfer.

Dated this 22nd day of July 1941.

[SEAL]

ASSOCIATED TRANSPORT, INC.,  
By BURGE M. SEYMOUR,

President.

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OATH

STATE OF NEW YORK,

County of New York,

887

Burge M. Seymour makes oath and says that he is the President of the Associated Transport, Inc.; that he is authorized by

said applicant to sign and file with the Interstate Commerce Commission this application and exhibits attached hereto, and to verify the facts and statements contained in said application and exhibits; that he has carefully examined all of such statements contained in said application and exhibits; and that same are true and correct to the best of his knowledge, information, and belief.

**BURGE M. SEYMOUR.**

Subscribed and sworn to before me, a Notary Public in and for the State and County above names, this 22 day of July 1941.

[SEAL]

**JOSEPH C. CATANZARO,**

Joseph C. Catanzaro,

*Notary Public.*

Bronx County Clerk's No. 25. Bronx County Register's No. 21C42. New York County Clerk's No. 132. New York County Register No. 2C125. Term Expires March 30, 1942.

### EXHIBIT A

#### ASSOCIATED TRANSPORT, INC.

#### Information respecting applicant

1. Date and State of incorporation, formation, or organization, whichever applicable: Date March 5, 1941. State Delaware.

2. Name, title, and business address of officers; partners; including limited or silent partners; or trustees; whichever applicable: H. D. Horton, Chairman Board of Directors, 1001 Clarkson St., Charlotte, N. C.; B. M. Seymour, President and Treasurer, 1775 Broadway, New York, N. Y.; and B. D. Ryan, Secretary, 1775 Broadway, New York, N. Y.

3. Name and business address of directors: H. D. Horton, 1001 Clarkson St., Charlotte, N. C.; B. M. Seymour, 1775 Broadway, New York, N. Y.; E. J. Arbour, 1179 Main St., Hartford, Conn.; J. J. McCarthy, Olney & Wales St., Taunton, Mass.; 149 J. P. Altwater, 22 Roosevelt St., Buffalo, N. Y.; R. W. Barnwell, Hawking St., Burlington, N. C.; C. C. Brock, Commonwealth Ave., Bristol, Va.; W. L. Moore, 75 Ivy St., N.E., Atlanta, Ga.; and J. S. Arnold, 52 William St., New York, N. Y.

4. Name and business address of 10 principal stockholders; shareholders or other owners, whichever applicable, as of July 22, 1941 (last record date) and their respective holdings: If holdings are in names of nominees, state names of real owners.

Name Street Address, City and State

Extent of Interest  
Class Shares %

## See BMC-22, Exhibit A-1-(d)

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-----  
5. Applicant is not a trustee, receiver, or other like representative of a real party in interest.

6. Applicant is not a rail, express, motor, or water carrier.

7. Applicant is the real party in interest and is not engaged in any other form of transportation or activity connected with transportation.

8. Applicant is not part of a system or group of companies.

(b) Applicant is not in control of, nor is it controlled by, or affiliated with, any individual, partnership, corporation, or other organization engaged in any form of transportation or activity connected with transportation.

9. Attached to the original, only, of this application is an exhibit in behalf of applicant, each identified as indicated. Where data are not available, or are inapplicable, it is so stated.

A-2 An authenticated copy of articles of incorporation and by-laws, with all amendments.

A-3 No authenticated copy of annual report to stockholders or shareholders for year preceding date of filing this application is available since applicant was only incorporated on March 5, 1941.

150 10. Attached to original and each copy of this application are the following exhibits in behalf of applicant, each identified as indicated. Where data are not available, or are inapplicable, it is so stated.

A-4 Copy of all resolutions of directors authorizing the transaction proposed, authenticated by proper executive officer; where the charter or bylaws require approval by the stockholders, copies of resolutions of stockholders authorizing the transaction proposed, and indicating the percentage of stock voting for such authorization.

A-5 Copies of all resolutions of stockholders or directors, or duly authorized committee thereof, authenticated by proper executive officer, designating by name and for that purpose the executive officer, by whom the application is signed, verified, and filed.

A-6 Balance sheet statement, in form prescribed, as of the latest available date in the current calendar year. No balance sheets for two preceding calendar years are available since applicant was not then in business.

A-7 No exhibit A-7 setting forth policy and practice with respect to reserves for depreciation of tangible property is furnished, since applicant has no such depreciable property.

A-8 No exhibit A-8 analyzing the intangible property accounts is furnished since applicant has no such property accounts.

A-9 No additions to, or reductions in, tangible property accounts during periods covered by balance sheet statement represent anything other than acquisitions of property or retirements or sales of property.

A-10 Income statement, in form prescribed, for current calendar year of latest available date. No income statement for each of the two preceding calendar years are available since applicant was not then in business.

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## EXHIBIT BMC-45, A-2

## CERTIFICATE OF INCORPORATION OF ASSOCIATED TRANSPORT, INC.

First. The name of the corporation is Associated Transport, Inc.

Second. Its principal office in the State of Delaware is located at No. 100 West Tenth Street, in the City of Wilmington, County of New Castle. The name and address of its resident agent, is The Corporation Trust Company, No. 100 West Tenth Street, Wilmington, Delaware.

Third. The nature of the business, or objects or purposes to be transacted, promoted, or carried on are:

To acquire, by purchase, subscription, or otherwise and to own, hold for investment or otherwise, and to use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of shares of stock, bonds, debentures, notes, scrip, securities, evidences of indebtedness, contracts or other obligations of any corporation or corporations, association or associations, domestic or foreign, or any firm or individual or of the United States or any State, Territory, or dependency of the United States or of any foreign government or governmental subdivision; and to issue in exchange therefor, stocks, bonds, or other securities or evidences of indebtedness of this Corporation and while the owner or holder of any such property, to receive, collect, or dispose of the interest, dividends and income and other rights accruing on or from such property and to possess and exercise in respect thereof all of the rights, powers, and privileges of ownership including all voting powers connected therewith; to loan its moneys, and to acquire, own, hold, lease, sell, and mortgage such real estate and other personal property as may be necessary, convenient, or incident to

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carrying out the purposes aforesaid, or any other purposes of the Company.

To engage in and carry on a general transportation business, other than railroad, to own and operate lines of omnibuses, trucks, taxicabs, and other motor vehicles propelled by gas, electricity, compressed air, or other motor power, on and over public streets, roads, and highways within, between, and without cities, villages and other municipal corporations, and over private rights-of-way, for the carriage of passengers, baggage, merchandise of every kind and description, freight, commodities, and mail (subject to contract with the United States government for the carriage of mail), and for the conduct of messenger and express service in any of the states of the United States of America; to engage in and carry on a general shipping and forwarding business; to contract with railroads, warehouses, steamboat lines and transportation lines of every kind, as well as with corporations, copartnerships, business concerns of every kind, individuals, and the public in general, covering, relating or incidental to, any of the business or kinds of business hereinabove referred to.

153 To build, erect, construct, purchase, hire, or otherwise acquire, buy, sell, own, dispose of, provide, establish, maintain, hold, lease, and operate freight, passenger and express depots and stations, newsstands, restaurants, warehouses, agencies, buildings, factories, structures, offices, houses, works, machinery, plants, terminals, garages and other buildings and structures, and all other property and things of whatsoever kind and nature, real, personal, and mixed, tangible and intangible, including goodwill, within and without the State of Delaware, and in any part of the world, suitable, necessary, useful, or advisable in connection with any of the objects hereinabove or hereafter set forth.

To manufacture, buy, sell, deal in, deal with, lease, and license the use of motor supplies and accessories, machinery, devices, and equipment, of all kinds, whether patented or otherwise, as well as steam, gas, gasoline, petroleum, pneumatic, hydraulic, electrical and other machinery, valves, joints, batteries, fittings, appliances, tools, implements, devices, equipment, and apparatus of every kind and character, and gas, gasoline, oil, materials, supplies, substances, and articles of every kind and character produced or manufactured thereby, or useful or convenient in the manufacture, operation, or repair thereof; and to do a general manufacturing and mercantile business.

154 To take part in or to assume the management, supervision, or control of the business or operations of any company, corporation, association, firm, or person and for that purpose to

appoint, employ, and remunerate any directors, accountants, or other experts or agents to investigate and examine into the condition, prospects, value, character, and circumstances of any business or undertaking and generally of any assets, property or rights.

To aid in any manner any corporation or association, domestic or foreign, or any firm or individual, any shares of stock in which or any bonds, debentures, notes, securities, evidence of indebtedness, contracts or obligations of which are held by or for this company, directly or indirectly, or in which or in the welfare of which the company shall have any interest; to guarantee the payment of dividends on or the capital represented by any shares of the capital stock of any such corporation or association; and to aid or participate in the reorganization, consolidation, or merger of any corporation in which or in the welfare of which the company shall have an interest.

In furtherance and not in limitation of the general powers conferred by the laws of the State of Delaware, and of the purposes hereinbefore stated, it is hereby expressly provided that the company shall also have the following authority and powers, to wit:

To do any and all things herein set forth to the same extent and as fully as natural persons might or could do and in any part of the United States or in any foreign country and as principal, agent, contractor, or otherwise, and either alone or in conjunction with other individuals, firms, associations, syndicates, or bodies politic,

155 To borrow or raise money without limit and upon any terms, for any purpose of the Company or any corporation, association, firm, syndicate, or individual, having a business or property which the company determines to finance, promote, or become interested in; to issue, sell, and dispose of the Company's bonds, debentures, notes, certificates of indebtedness and other obligations, secured or unsecured and however evidenced, upon any terms, including the right to convert the same into shares of any class upon such terms and conditions as the Board of Directors may fix and determine, and as security therefore to mortgage, pledge or grant any charge or impose any lien upon all or any part of the real or personal property, rights, interests or franchises of the Company whether owned by it at the time or thereafter acquired; and to guarantee or become surety with respect to any indebtedness or obligation of any corporation, association, firm, syndicate, or individual in whose business affairs the company may be interested in any manner.

To pay for any property, rights, or interests acquired by the company in cash or other property, rights or interests held by the company or by issuing or assigning and delivering in exchange therefor its own stock, rights or options to purchase or subscribe for its own stock or other securities, its own bonds, debentures, notes, certificates of indebtedness or other obligations or any of them, however evidenced; to purchase or otherwise acquire, hold, sell, pledge, transfer, or otherwise dispose of and to reissue any shares of its own capital stock (so far as may be permitted by law) and its bonds, debentures, notes, or other securities or evidence of indebtedness.

156 To enter into, make, and perform contracts of every kind and description with any person, firm, association, corporation, municipality, county, state, body politic, or government or colony or dependency thereof.

To purchase, hold, sell, and transfer shares of its own capital stock to the extent at any time permitted by law, provided that shares of its own capital stock belonging to it shall not be voted upon, directly or indirectly.

To conduct its business and in connection therewith to maintain one or more offices in the State of Delaware, other states, the District of Columbia, and territories, colonies, and possessions of the United States and in foreign countries.

The foregoing provisions shall be construed both as objects and powers; and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of the Company.

Fourth. The total number of shares of stock which the corporation shall have authority to issue is one million one hundred thousand (1,100,000) of which stock one hundred thousand (100,000) shares of the par value of One Hundred Dollars (\$100.00) each, amounting in the aggregate to Ten Million Dollars (\$10,000,000.00) shall be preferred stock and of which one million (1,000,000) shares of the par value of One Dollar (\$1.00) each, amounting in the aggregate to One Million Dollars (\$1,000,000.00) shall be common stock.

157 The designations, and the powers, preferences, and rights, and the qualifications, limitations or restrictions thereof, in respect of the preferred stock and the common stock are as follows:

The holders of the preferred stock shall be entitled to receive, when and as declared by the board of directors of the corporation either out of the net assets in excess of capital or out of the net profits as permitted by law, preferential dividends at the rate of six per centum (6%) per annum on the par value thereof; and no more, payable annually, semiannually, or quarterly on such

days as may be determined by the board of directors, before any dividend shall be declared or paid upon or set apart for the common stock. Such dividends upon the preferred stock shall be cumulative from the date of issue thereof, so that if dividends for any past dividend period at the rate of six per centum (6%) per annum shall not have been paid thereon, or declared and a sum sufficient for payment thereof set apart, the deficiency shall be fully paid or set apart, but without interest, before any dividend shall be paid upon or set apart for the common stock. Whenever the full dividend on the preferred stock for all past dividend periods shall have been paid, and the full dividend thereon for the then current dividend period shall have been paid or declared and a sum sufficient for the payment thereof set apart, dividends upon the common stock may be declared by the board of directors out of the remainder of the net assets in excess of capital or out of the net profits, available for dividends.

158 At any time within five (5) years from the date of issuance, the corporation may at the option of the board of directors, redeem the whole or any part of the outstanding preferred stock on any dividend payment date by paying One Hundred Ten Dollars (\$110.00) for each share thereof, and thereafter, by paying One Hundred Five Dollars (\$105.00) for each share thereof, together with a sum of money equivalent to dividends at the rate of six per centum (6%) per annum on the par value thereof from the date or dates on which the dividends on said shares of preferred stock so to be redeemed become cumulative to the date fixed for such redemption, less the amount of dividends theretofore paid thereon. Notice of such election to redeem shall, not less than thirty (30) days prior to the dividend date upon which the stock is to be redeemed, be mailed to each holder of stock so to be redeemed at his address as it appears on the books of the corporation. In case less than all of the outstanding preferred stock is to be redeemed, the amount to be redeemed and the method of effecting such redemption, whether by lot or pro rata or otherwise, may be determined by the board of directors. If on or before the redemption date named in such notice, the funds necessary for such redemption shall have been set aside by the corporation so as to be available for payment on demand to the holders of the preferred stock so called for redemption, then, notwithstanding that any certificate of the preferred stock so called for redemption shall not have been surrendered for cancellation, the dividends thereon shall cease to accrue from and after the date of redemption so designated, and all rights with respect to such preferred stock so called for redemption, including any right to vote or otherwise participate

in the determination of any proposed corporate action, shall forthwith after such redemption date cease and determine, except only the right of the holder to receive the redemption price therefor, but without interest. Stock redeemed pursuant to the provisions hereof shall not be reissued and no preferred stock shall be issued in lieu thereof or in exchange therefor.

In the event of any liquidation, dissolution or winding up of the affairs of the corporation, whether voluntary or involuntary, the holders of the preferred stock shall be entitled, before any assets of the corporation shall be distributed among or paid over to the holders of the common stock; to be paid one hundred five Dollars (\$105.00) per share, together with a sum of money equivalent to dividends at the rate of six per centum (6%) per annum on the par value thereof, from the date or dates upon which dividends on such preferred stock became cumulative to the date of payment thereof, less the amount of dividends theretofore paid thereon. After the making of such payments to the holders of the preferred stock, the remaining assets of the corporation shall be distributed among the holders of the common stock alone, share and share alike. If, upon such liquidation, dissolution or winding up, the assets of the corporation distributable as aforesaid among the holders of the preferred stock shall be insufficient to permit of the payment to them of said amount, the entire assets shall be distributed ratably among the holders of the preferred stock.

The holders of the preferred stock shall have the right, at any time within the first three (3) years after the date of issuance, to convert said preferred stock into common stock of the corporation at the rate of four (4) shares of common stock for one (1) share of preferred stock; for the next succeeding three (3) years at the rate of three and one-third ( $3\frac{1}{3}$ ) shares of common stock for one (1) share of preferred stock, and, thereafter, at the rate of three (3) shares of common stock for one (1) share of preferred stock.

160 Except as expressly required by law or as herein otherwise provided, the holders of the preferred stock shall have no voting power nor shall they be entitled to notice of meetings of stockholders, all rights to vote and all voting power being vested exclusively in the holders of the common stock.

If, at any time, however, and whenever, dividends upon the preferred stock shall be in default and unpaid in whole or in part for a period of two (2) years, the holders of the preferred stock shall have the same voting power as the holders of the common stock, to wit: one vote for each share of stock, and shall be entitled to receive notice of meetings of stockholders;

and such voting power shall so continue to vest in the holders of the preferred stock until all arrears in the payment of cumulative dividends upon the preferred stock shall have been paid and the dividends thereon for the then current dividend period shall have been declared and the funds for the payment thereof set aside. However, if and when thereafter the defaulted dividends shall be paid in full and provisions made for the current dividend as herein provided (and such payments shall be made as promptly as shall be consistent with the best interests of the corporation) the holders of the preferred stock shall be divested of such voting power and the voting power shall then revert exclusively in the holders of the common stock; but subject always to the same provision for the vesting of such voting power in the holders of the preferred stock in case of any similar default or defaults in the payment of dividends upon the preferred stock for a period of two (2) years, and the revesting of such entire voting power in the holders of the common stock in the event that such default or defaults shall be cured as above provided.

161 At all elections of directors each stockholder at the time entitled to vote shall be entitled to as many votes as shall equal the number of his voting shares of stock, multiplied by the number of directors to be elected, and he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two or more of them, as he may see fit.

Fifth. The amount of capital with which the corporation will commence business is One Thousand Dollars (\$1,000.00).

Sixth. The names and places of residence of the incorporators are as follows: R. F. Lewis, Wilmington, Delaware; L. H. Herman, Wilmington, Delaware; Walter Lenz, Wilmington, Delaware.

Seventh. The corporation is to have perpetual existence.

Eighth. The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

Ninth. In furtherance, and not in limitation of the powers conferred by statute, the board of directors is expressly authorized:

To make, alter or repeal the bylaws of the corporation.

To authorize and cause to be executed mortgages and liens upon the real and personal property of the corporation.

To set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose or to abolish any such reserve in the manner in which it was created.

162 By resolution or resolutions, passed by a majority of the whole board to designate one or more committees, each committee to consist of two or more of the directors of the corporation, which, to the extent provided in said resolution or resolutions or in the bylaws of the corporation, shall have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation, and may have power to authorize the seal of the corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be stated in the bylaws of the corporation or as may be determined from time to time by resolution adopted by the board of directors.

When and as authorized by the affirmative vote of the holders of a majority of the stock issued and outstanding having voting power given at a stockholders' meeting duly called for that purpose, or when authorized by the written consent of the holders of a majority of the voting stock issued and outstanding, to sell, lease, or exchange all of the property and assets of the corporation, including its goodwill and its corporate franchises, upon such terms and conditions and for such consideration, which may be in whole or in part shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors shall deem expedient and for the best interests of the corporation.

The corporation may in its bylaws confer powers upon its board of directors in addition to the foregoing, and in addition to the powers and authorities expressly conferred upon it by statute.

163 Tenth. Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this corporation under the provisions of Section 4407 of the Revised Code of 1935 of said State, or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of Section 43 of the General Corporation Law of the State of Delaware, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said Court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of

this corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the Court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders of this corporation, as the case may be, and also on this corporation.

164 Eleventh. Meetings of stockholders may be held without the State of Delaware, if the bylaws so provide. The books of the corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be from time to time designated by the board of directors.

Twelfth. The corporation reserves the right to amend, alter, change, or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

We, the undersigned, being each of the incorporators hereinbefore named for the purpose of forming a corporation in pursuance of the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that the facts herein stated are true, and accordingly have hereunto set our hands and seals this 5th day of March A. D. 1941.

R. F. LEWIS. [SEAL]

L. H. HERMAN. [SEAL]

WALTER LENZ. [SEAL]

165 STATE OF DELAWARE,  
COUNTY OF NEW CASTLE.

SS:

Be it remembered, That on this 5th day of March A. D. 1941, personally came before me: Harold E. Grantland, a Notary Public for the State of Delaware, R. F. Lewis, L. H. Herman, and Walter Lenz, all of the parties to the foregoing certificate of incorporation, known to me personally to be such, and severally acknowledged the said certificate to be the act and deed of the signers respectively and that the facts therein stated are truly set forth.

Given under my hand and seal of office the day and year aforesaid.

HAROLD E. GRANTLAND,  
Harold E. Grantland,

*Notary Public.*

Appointed Jan. 11, 1941. State of Delaware. Term Two Years.

## STATE OF DELAWARE

## Office of Secretary of State

I, Earle D. Willey, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Incorporation of the "Associated Transport, Inc.," as received and filed in this office the fifth day of March A. D. 1941, at 3 o'clock P. M.

In Testimony Whereof, I have hereunto set my hand and official seal at Dover, this sixth day of March in the year of our Lord one thousand nine hundred and forty-one.

[SEAL]

EARLE D. WILLEY,  
Secretary of State.

## EXHIBIT BMC-45 A-2

## ASSOCIATED TRANSPORT, INC.

## Certificate of Amendment of Certification or Incorporation

Associated Transport, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify:

First. That the board of directors of said corporation, at a meeting duly convened and held, adopted a resolution proposing and declaring advisable the following amendment to the certificate of incorporation of said corporation:

Resolved that the certificate of incorporation of Associated Transport, Inc., be amended by striking out the seventh, eighth, and ninth paragraphs of the Article thereof number "fourth" and by inserting in lieu thereof the following paragraph, to wit:

"At all meetings of the stockholders, and on all other proceedings requiring a vote of the stockholders, each holder of preferred stock and each holder of common stock of the corporation shall have one (1) vote for each share of such stock or stocks standing in his name on the books of the corporation; provided, however, that at all elections of directors each stockholder at the time entitled to vote shall be entitled to as many votes as shall equal the number of his voting shares of stock, multiplied by the number of directors to be elected, and he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two (2) or more of them, as he may see fit."

Second. That the said amendment has been consented to and authorized by the holders of all the issued and outstanding stock, entitled to vote, by a written consent given in accordance

with the provisions of Section 81 of the General Corporation Law of Delaware, and filed with the corporation on the 15th day of May 1941.

Third. That the aforesaid amendment was duly adopted in accordance with the applicable provisions of Sections 26 and 81 of the General Corporation Law of Delaware.

In witness whereof, said Associated Transport, Inc., has caused its corporate seal to be hereunto affixed and this certificate to be signed by Burge M. Seymour, its President, and Marco F. Hellman, its Secretary, this 15th day of May 1941.

ASSOCIATED TRANSPORT INC.

By B. M. SEYMOUR,

*President.*

MARCO F. HELLMAN,

*Secretary.*

169 STATE OF NEW YORK,

*County of New York ss:*

Be it remembered that on this 15th day of May, A. D. 1941, personally came before me, Joseph C. Catanzaro, a Notary Public in and for the County and State aforesaid, Burge M. Seymour, President of Associated Transport, Inc., a corporation of the State of Delaware, the corporation described in and which executed the foregoing certificate, known to me personally to be such, and he, the said Burge M. Seymour, as such President, duly executed said certificate before me and acknowledged the said certificate to be his act and deed and the act and deed of said corporation; that the signatures of the said President and of the said Secretary of said corporation to said foregoing certificate are in the handwriting of the said President and Secretary of said corporation, respectively, and that the seal affixed to said certificate is the common or corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and seal of office the day and year aforesaid.

JOSEPH C. CATANZARO,

*Notary Public, Bronx County.*

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STATE OF DELAWARE

Office of Secretary of State

I, Earle D. Willey, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Amendment of Certificate of Incorporation of the "Associated Transport, Inc." as received and filed in

this office the twenty-third day of May A. D. 1941, at 11 o'clock A. M.

In Testimony Whereof, I have hereunto set my hand and official seal at Dover, this twenty-third day of May in the year of our Lord one thousand nine hundred and forty-one.

[SEAL]

EARLE D. WILLEY,  
*Secretary of State.*

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#### BYLAWS

#### Offices

1. The principal office shall be in the City of Wilmington, County of New Castle, State of Delaware, and the name of the resident agent in charge thereof is The Corporation Trust Company.

2. The corporation may also have an office in the City of New York, State of New York, and also offices at such other places as the board of directors may from time to time appoint or the business of the corporation may require.

3. The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization and the words "Seal, Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

#### Stockholders' meetings

4. All meetings of the stockholders for the election of directors shall be held at the office of the corporation in New York. Special meetings of stockholders for any other purpose may be held at such place and time as shall be stated in the notice of the meeting.

5. An annual meeting of stockholders, after the year 1941, shall be held on the fifteenth day of March in each year if not a legal holiday, and if a legal holiday, then on the next secular day following, at 11:00 o'clock A. M., when they shall elect by a plurality vote, by ballot, a board of directors, and transact such other business as may properly be brought before the meeting.

172 I, B. D. Ryan, Secretary of Associated Transport, Inc., a Delaware corporation, do hereby certify that the annexed copy of the Bylaws of Associated Transport, Inc., is a true and correct copy of the Bylaws of said corporation.

Witness my hand and seal of the corporation, this 17th day of July 1941.

B. D. RYAN.

173 6. The holders of a majority of the stock issued and outstanding, and entitled to vote thereat, present in person, or represented by proxy, shall be requisite and shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute, by the certificate of incorporation or by these bylaws. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person, or by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. At such adjourned meeting at which a quorum shall be present any business may be transacted at the meeting as originally notified.

7. At any meeting of the stockholders every stockholder having the right to vote shall be entitled to vote in person, or by proxy appointed by an instrument in writing subscribed by such stockholder and bearing a date not more than three years prior to said meeting, unless said instrument provides for a longer period. Each stockholder shall have one vote for each share of stock having voting power, registered in his name on the books of the corporation, and except where the transfer books of the corporation shall have been closed or a date shall have been fixed as a record date for the determination of its stockholders entitled to vote, no share of stock shall be voted on at any election of directors which shall have been transferred on the books of the corporation within twenty days next preceding such election of directors. At all elections of directors each stockholder at the time entitled to vote shall be entitled to as many votes as shall equal the number of his voting shares of stock, multiplied by the number of directors to be elected, and he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two or more of them, as he may see fit.

174 8. Written notice of the annual meeting shall be served upon or mailed to each stockholder entitled to vote thereat at such address as appears on the stock books of the corporation, at least ten days prior to the meeting.

9. A complete list of the stockholders entitled to vote at the ensuing election, arranged in alphabetical order, with the residence of each and the number of voting shares held by each, shall be prepared by the secretary and filed in the office where the election is to be held, at least ten days before every election, and shall at all times, during the usual hours for business and during the whole time of said election, be open to the examination of any stockholder.

10. Special meetings of the stockholders, for any purposes, unless otherwise prescribed by statute, may be called by the president and shall be called by the president or secretary at the request in writing of a majority of the board of directors, or at the request in writing of stockholders owning a majority in amount of the entire capital stock of the corporation issued and outstanding, and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting.

11. Business transacted at all special meetings shall be confined to the objects stated in the call.

12. Written notice of a special meeting of stockholders, stating the time and place and object thereof, shall be served upon or mailed at least five days before such meeting to each stockholder entitled to vote thereat at such address as appears on the books of the corporation.

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#### Directors

13. The number of directors which shall constitute the whole board shall be not less than three but may be increased to fifteen. The first board shall consist of three directors. Directors need not be stockholders. They shall be elected at the annual meeting of the stockholders, and each director shall be elected to serve until his successor shall be elected and shall qualify.

14. The directors may hold their meetings and keep the books of the corporation, except the original or duplicate stock ledger, outside of Delaware, at the office of the corporation in the City of New York, New York, or at such other places as they may from time to time determine.

15. If the office of any director or directors becomes vacant by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, a majority of the remaining directors, though less than a quorum shall choose a successor or successors, who shall hold office for the unexpired term in respect to which such vacancy occurred or until the next election of directors.

16. The property and business of the corporation shall be managed by its board of directors which may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by these by-laws directed or required to be exercised or done by the stockholders.

#### Committee of directors

17. The Board of directors may, by resolution or resolutions passed by a majority of the whole board, designate one or more committees, each committee to consist of two or more of the direc-

176      tors of the corporation, which, to the extent provided in said resolution or resolutions, shall have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation, and may have power to authorize the seal of the corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the board of directors.

18. The committees shall keep regular minutes of their proceedings and report the same to the board when required.

#### Compensation of directors

19. Directors, as such, shall not receive any stated salary for their services, but by resolution of the board, a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the board; provided that nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

20. Members of special or standing committees may be allowed like compensation for attending committee meetings.

#### Meetings of the board

21. The first meeting of each newly elected board shall be held at such time and place either within or without the State of Delaware as shall be fixed by the vote of the stockholders at the annual meeting, and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting; provided a majority of the whole board shall be present; or they may meet at such place and time as shall be fixed by the consent in writing of all the directors.

177      22. Regular meetings of the board may be held without notice at such time and place either within or without the State of Delaware as shall from time to time be determined by the board.

23. Special meetings of the board may be called by the president on five days' notice to each director, either personally or by mail or by telegram; special meetings shall be called by the president or secretary in like manner and on like notice on the written request of two directors.

24. At all meetings of the board a majority of the directors shall be necessary and sufficient to constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the

act of the board of directors, except as may be otherwise specifically provided by statute or by the certificate of incorporation or by these bylaws.

### Officers

25. The officers of the corporation shall be chosen by the directors and shall be a president, a vice president, a secretary, and a treasurer. The board of directors may also choose additional vice presidents, assistant secretaries and assistant treasurers. The secretary and treasurer may be the same person, or the vice president may hold at the same time the office of secretary or treasurer.

26. The board of directors, at its first meeting after each annual meeting of stockholders shall choose a president from its members, and one or more vice presidents, a secretary, and a treasurer, none of whom need be a member of the board.

178 27. The board may appoint such other officers and agents as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the board.

28. The salaries of all officers and agents of the corporation shall be fixed by the board of directors.

29. The officers of the corporation shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the board of directors may be removed at any time by the affirmative vote of a majority of the whole board of directors. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the board of directors.

### The president

30. The president shall be the chief executive officer of the corporation; he shall preside at all meetings of the stockholders and directors, shall be ex officio a member of all standing committees, shall have general and active management of the business of the corporation, and shall see that all orders and resolutions of the board are carried into effect.

31. He shall execute bonds, mortgages, and other contracts requiring a seal, under the seal of the corporation, except where required by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the board of directors to some other officer or agent of the corporation.

## Vice presidents

32. The vice presidents in the order of their seniority shall, in the absence or disability of the president, perform the duties and exercise the powers of the president and shall perform such other duties as the board of directors shall prescribe.

## The secretary and assistant secretaries

33. The secretary shall attend all sessions of the board and all meetings of the stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the board of directors, and shall perform such other duties as may be prescribed by the board of directors or president, under whose supervision he shall be. He shall keep in safe custody the seal of the corporation and, when authorized by the board, affix the same to any instrument requiring it and, when so affixed, it shall be attested by his signature or by the signature of the treasurer or an assistant secretary.

34. The assistant secretaries in order of their seniority shall, in the absence or disability of the secretary, perform the duties and exercise the powers of the secretary and shall perform such other duties as the board of directors shall prescribe.

## The treasurer and assistant treasurers

35. The treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors.

180 36. He shall disburse the funds of the corporation as may be ordered by the board, taking proper vouchers for such disbursements, and shall render to the president and directors, at the regular meetings of the board, or whenever they may require it, an account of all his transactions as treasurer and of the financial condition of the corporation.

37. If required by the board of directors, he shall give the corporation a bond (which shall be renewed every six years) in such sum and with such surety or sureties as shall be satisfactory to the board for the faithful performance of the duties of his office and for the restoration to the corporation, in case of his death, resignation, retirement or removal from office, of all

books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the corporation.

38. The assistant treasurers in the order of their seniority shall, in the absence or disability of the treasurer, perform the duties and exercise the powers of the treasurer and shall perform such other duties as the board of directors shall prescribe.

#### Certificates of stock

39. The certificates of stock of the corporation shall be numbered and shall be entered in the books of the corporation as they are issued. They shall exhibit the holder's name and number of shares and shall be signed by the president or a vice president and the treasurer or an assistant treasurer, or the secretary or an assistant secretary. The designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations, or restrictions of such preferences and/or rights shall be set  
181 forth in full or summarized on the face or back of the certificates which the corporation shall issue to represent such class or series of stock. Certificates may be issued for partly paid shares and in such case upon the face or back of the certificates issued to represent any such partly paid shares, the total amount of the consideration to be paid therefor, and the amount paid thereon shall be specified. If the corporation has a transfer agent or an assistant transfer agent or a transfer clerk acting on its behalf and a registrar, the signature of any such officer may be facsimile.

#### Transfers of stock

40. Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

#### Closing of transfer books

41. The board of directors shall have power to close the stock transfer books of the corporation for a period not exceeding fifty days preceding the date of any meeting of stockholders or the date for payment of any dividend or the date for the allotment of rights or the date when any change or conversion or exchange of capital stock shall go into effect or for a period of not exceeding fifty days in connection with obtaining the consent of

stockholders for any purpose; provided, however, that in lieu of closing the stock transfer books as aforesaid, the board of directors may fix in advance a date, not exceeding fifty days preceding the date of any meeting of stockholders or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining such consent, as a record date for the determination of the stockholders entitled to notice of, and to vote at, any such meeting, and any adjournment thereof, or entitled to receive payment of any such dividend, or to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of capital stock, or to give such consent, and in such case such stockholders, and only such stockholders as shall be stockholders of record on the date so fixed, shall be entitled to such notice of, and to vote at, such meeting and any adjournment thereof, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights, or to give such consent, as the case may be, notwithstanding any transfer of any stock on the books of the corporation after any such record date fixed as aforesaid.

#### Registered stockholders

42. The corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

#### Lost certificate

43. The board of directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost. When authorizing such issue of a new certificate or certificates, the board of directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost or destroyed.

### Checks

44. All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the board of directors may from time to time designate.

### Fiscal Year

45. The fiscal year shall begin the first day of January in each year.

### Dividends

46. Dividends upon the capital stock of the corporation, subject to the provisions of the certificate of incorporation, if any, may be declared by the board of directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock.

47. Before payment of any dividend there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the directors shall think conducive to the interest of the corporation, and the directors may abolish any such reserve in the manner in which it was created.

### Directors' annual statement

48. The board of directors shall present at each annual meeting and when called for by vote of the stockholders at any special meeting of the stockholders, a full and clear statement of the business and condition of the corporation.

### Notices

49. Whenever under the provisions of these bylaws notice is required to be given to any director or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, by depositing the same in the post office or letter box, in a post-paid sealed wrapper, addressed to such director or stockholder at such address as appears on the books of the corporation, or, in default of other address, to such director or stockholder at the General Post Office in the City of Wilmington, Delaware, and such notice shall be deemed to be given at the time when the same shall be thus mailed.

50. Any notice required to be given under these bylaws may be waived in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein.

### Amendments

51. These bylaws may be altered or repealed at any regular meeting of the stockholders or at any special meeting of the stockholders at which a quorum is present or represented, provided notice of the proposed alteration or repeal be contained in the notice of such special meeting, by the affirmative vote of a majority of the stock entitled to vote at such meeting and present 185 or represented thereat, or by the affirmative vote of not less than two-thirds of the board of directors at any regular meeting of the board or at any special meeting of the board if notice of the proposed alteration or repeal be contained in the notice of such special meeting; provided, however, that no change of the time or place for the election of directors shall be made within sixty days next before the day on which such election is to be held, and that in case of any change of such time or place, notice thereof shall be given to each stockholder in person or by letter mailed to his last known post office address at least twenty days before the election is held.

### Chairman of the board.

52. Notwithstanding anything in these bylaws to the contrary, there is hereby created and established the office of Chairman of the Board. This office shall be filled by a majority vote of the Board of Directors and the person so elected shall hold office for one year or until the next annual meeting of the Board of Directors or until his successor shall have been elected and qualified.

The Chairman of the Board shall act for and on behalf of the Board of Directors in carrying out the policies and directions of the Board as the same may be from time to time determined upon.

The Chairman of the Board shall have general supervision of the affairs of the company and shall approve all contracts, agreements or obligations involving the sum of \$500.00 or more before the same shall become binding upon the company or until prior approval of the same shall have been given by a majority vote of the Board of Directors.

186. The Chairman of the Board shall preside at all meetings of the Board of Directors and shall, at such meetings, make a detailed report of all his actions in connection with his office as Chairman of the Board.

The Chairman of the Board may be removed from office, for cause, by a majority vote of the Board of Directors.

I, Bertha D. Ryan, secretary of Associated Transport, Inc., a corporation duly organized and existing under the laws of the State of Delaware, do hereby certify that the following is a true and correct excerpt from the minutes of a special joint meeting of the stockholders and directors of said company duly held in the City of New York on the 11th day of June 1941:

"The president presented to the board of directors proposed agreements for the purchase of capital stock (hereinafter referred to as stock acquisition agreements) as follows:

Agreement for the purchase of the capital stock of Horton Motor Lines, Incorporated.

Agreement for the purchase of the capital stock of Consolidated Motor Lines, Incorporated.

Agreement for the purchase of the capital stock of Barnwell Brothers, Incorporated.

Agreement for the purchase of the capital stock of McCarthy Freight System, Inc.

Agreement for the purchase of the capital stock of M. Moran Transportation Lines, Inc.

Agreement for the purchase of the capital stock of Southeastern Motor Lines, Incorporated.

Agreement for the purchase of the capital stock of The Transportation, Incorporated.

Agreement for the purchase of the capital stock of Southern New England Terminals, Inc.

Agreement for the purchase of the capital stock of Barnwell Warehouse & Brokerage Company.

Agreement for the purchase of the capital stock of Conger Realty Company.

Agreement for the purchase of the capital stock of Brown Equipment and Manufacturing Company.

Upon motion duly made and seconded, it was unanimously

188 Resolved that said agreements be and they are hereby approved and that the president be authorized to execute all of said agreements and the secretary be authorized to attest and to affix the corporate seal to such of said agreements as she may be directed by the president."

Witness my hand and the seal of the corporation this 18th day of July 1941.

[CORPORATE SEAL]

(Signed) B. D. RYAN,  
Secretary.

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## EXHIBIT A-5

I, Bertha D. Ryan, secretary of Associated Transport, Inc., a corporation duly organized and existing under the laws of the State of Delaware, do hereby certify that the following is a true and correct copy of a resolution unanimously adopted at a special joint meeting of the stockholders and directors of said company duly held in the City of New York on the 11th day of June 1941:

"Resolved that B. M. Seymour, president of this corporation is hereby authorized to cause to be prepared, to sign, verify the facts and circumstances, and cause to be filed with the Interstate Commerce Commission, such application or applications and amendments thereto, together with all appropriate exhibits as may be necessary, desirable or advisable for the required authority to bring about the combined ownership, control and consolidation contemplated by certain contracts the execution of which has this day been authorized by this board."

Witness my hand and the seal of the corporation this 18th day of July 1941.

[CORPORATE SEAL]

B. D. RYAN,  
*Secretary.*

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## EXHIBITS A-4 A-5

I, J. P. Altwater, Acting Secretary of Associated Transport, Inc., a corporation duly organized and existing under the laws of the State of Delaware, do hereby certify that the following is a true and correct excerpt from the minutes of a special meeting of the directors of said company duly held in the City of New York on the 23rd day of July 1941:

"The President presented to the Board of Directors agreement for the acquisition of capital stock of Arrow Carrier Corporation.

"The President also presented to the Board of Directors executed applications of this corporation to the Interstate Commerce Commission under Forms BMC-45 and BMC-22, in which applications the aforesaid acquisition of capital stock of Arrow Carrier Corporation was included.

"Upon motion duly made and seconded, it was

"Resolved, that the said agreement for the acquisition of capital stock of Arrow Carrier Corporation is expressly approved, ratified and confirmed.

"Further Resolved, that the action of B. M. Seymour, President of this corporation, in including such company in the aforesaid applications, is hereby approved, ratified and confirmed, and that the said President is hereby directed to file

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## MCLEAN TRUCKING CO., INC., ET AL.

such applications forthwith with the Interstate Commerce Commission.

Witness my hand and the seal of the corporation, this 23rd day of July 1941.

[CORPORATE SEAL]

JOHN P. ALTWATER,  
Acting Secretary.

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## EXHIBIT A-6

## ASSOCIATED TRANSPORT, INC.

## Balance Sheet as of June 30, 1941

Cash in Bank	\$36,446.39
Notes Receivable	15,620.00
Deferred Expenses	8,135.61
Total Assets	60,202.00
Common Stock Issued	60,202.00

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## EXHIBIT A-10

## ASSOCIATED TRANSPORT, INC.

## Analysis of Cash Receipts and Disbursements March 5, 1941, to June 30, 1941

Cash Receipts:	
6/13/41 Sales of Stock	\$44,582.00
Cash Disbursements:	
6/18/41 Corporation Trust Co.—Fees	78.23
6/18/41 Ryan-West Banknote Co. Inc.—Printing	37.18
6/18/41 B. M. Seymour—Salary	2,600.00
6/19/41 B. Rubin—Printing	529.20
6/20/41 Nordlinger, Riegelman & Cooper—Legal Fees	3,500.00
6/23/41 B. M. Seymour—Salary	2,000.00
Total Cash Disbursements	8,135.61
Cash Balance June 30, 1941	36,446.39

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## EXHIBIT B

## INFORMATION RESPECTING CARRIERS CONTROL OF WHICH IS PROPOSED TO BE ACQUIRED

1. Date and State of incorporation, formation, or organization, whichever applicable:

See Exhibit B-7

2. There is no financial or other relationship, direct or indirect, existing between applicant and carriers, control of which is proposed to be acquired.

3. For brief description of nature, extent, and scope of motor carrier operations of carriers, control of which is proposed to be acquired; and number or numbers assigned by Interstate Commerce Commission to operating authority or application for same; and status of latter, see Exhibit B-8.

3a. The entire operating rights of the carriers, authority for the control and consolidation of which are herein applied for, are sought to be transferred and merged.

4. Attached to original and each copy of this application are the following exhibits in behalf of motor carriers of which control is proposed to be acquired, identified each as indicated. Where data requested are not available, or are inapplicable, it is so stated.

B-2—Balance sheet statement, in form prescribed, as of latest available date in current calendar year and as of the close of each of the two preceding calendar years.

B-3—Statement setting forth policy and practice with respect to reserve for depreciation of tangible property, including rates by classes of property, and whether the reserve account represents an actual deposit of funds.

B-4—Analysis of intangible property accounts including for each item date of acquisition, source of authority, account in which presently recorded, amounts thereof, reserve, and policy and practice followed with respect to amortization of intangible property.

B-5—Statement of additions to, or reductions in, tangible property accounts during periods covered by balance sheet statement representing anything other than acquisitions of property, and full explanation of amounts and nature of charges and accounts affected.

B-6—Income statement, in form prescribed, for current calendar year to the latest available date and for each of the two preceding calendar years.

B-7—Statement concerning incorporation, stock holdings, affiliates or subsidiaries, and other information about companies, control of which is proposed to be acquired.

B-8—Brief description of nature, extent and scope of motor carrier operations of carriers, control of which is proposed to be acquired.

**EXHIBIT B-2**

**ASSOCIATED TRANSPORT, INC.**

Comparative Balance Sheet of the Carrier Companies Included in the I. C. C. Application as of April 30, 1941, December 31, 1940, and December 31, 1939

	Consolidated Motor Lines, Inc.				McCarthy Freight System, Inc.				M. Morgan Transportation Lines, Inc.			
	May 17, 1941		12/31/40 per books	12/31/39 per books	4/19/41 Adjusted	5/17/41 per books	12/31/40 per books	12/31/39 per books	April 26, 1941		12/28/40 per books	12/30/39 per books
	Adjusted	Per-books							Adjusted	Per books		
Current assets:												
Cash	\$216,229.13	\$216,264.16	\$118,263.09	\$107,364.67	\$98,791.26	\$55,164.81	\$61,913.71	\$28,068.05	\$80,398.75	\$79,042.09	\$45,032.75	\$114,392.71
Working funds	11,985.03	11,959.00	12,255.00	11,200.00	765.00	765.00	765.00	790.00	853.26	2,540.00	2,475.00	2,330.00
Special deposits	965.00	965.00	715.00	1,055.00	5,961.60	7,357.00	6,787.00	9,056.36	35.00	95.00	96.00	103.00
Notes receivable	36,420.00	36,421.05	3,300.00									
Accounts receivable	306,102.71	306,102.71	247,324.58	227,637.63	222,141.51	174,460.69	156,931.24	103,075.83	324,267.54	302,016.92	199,803.78	104,524.54
Total notes and accounts receivable	342,522.71	342,523.76	250,624.58	227,637.63	222,141.51	174,460.69	165,931.24	103,075.83	324,267.54	302,016.92	199,803.78	104,524.54
Less: Reserve for uncollectible accounts	8,389.94	47,517.96	44,130.96	28,510.06	3,492.64	102.62	1,279.69	1,500.00	5,031.01	9,250.41	34,200.12	25,852.98
Notes and accounts receivable net	334,132.77	295,005.80	206,493.62	199,127.56	218,648.87	174,358.07	155,651.55	101,575.83	319,236.53	292,766.51	155,603.66	78,672.46
Materials & supplies	517,118.14	124,014.57	108,840.47	73,963.35	26,146.48	31,849.95	20,582.88	19,630.97	36,076.56	32,740.90	28,768.05	25,496.00
Other current assets	11,440.05	11,440.00	10,907.97	677.92								
Total current assets	691,801.12	629,699.23	457,445.15	363,288.49	322,312.41	206,464.83	245,700.14	199,121.21	436,510.04	407,757.01	271,977.46	230,886.17
Tangible property:												
Carrier operating property	1,508,045.49	1,507,633.75	1,327,056.33	1,212,464.50	929,906.56	911,863.49	856,487.05	799,127.18	923,312.43	922,882.99	856,833.97	706,551.09
Less: Reserve for depreciation & amortiz	731,612.58	756,799.16	751,718.46	621,793.73	408,082.95	513,942.73	540,272.00	467,950.22	438,075.93	447,442.70	498,455.64	464,730.19
Net carrier operating property	776,432.91	750,834.59	575,337.87	590,670.76	521,823.55	397,920.75	346,215.05	331,176.96	485,236.50	475,440.29	358,378.33	241,820.90



Comparative Balance Sheet of the Carrier Companies Included in the I. C. C. Application as of April 30, 1941, December 31, 1940, and December 31, 1939—Continued

Assets	Horton Motor Lines, Inc.				Barnwell Brothers, Inc.				Transportation, Inc.			
	Apr. 30, 1941		12/31/40		Apr. 30, 1941		12/31/40		Apr. 30, 1941		12/31/40	
	Adjusted	per books	per books	per books	Adjusted	per books	per books	per books	Adjusted	per books	per books	per books
<b>Current assets:</b>												
Cash	\$43,983.05	\$43,614.33	\$20,670.45	\$116,308.55	\$29,554.90	\$29,554.90	\$30,217.22	\$31,176.59	\$5,644.87	\$5,644.87	\$5,785.24	\$4,983.25
Working funds	42,748.88	47,425.00	42,065.00	36,258.57	7,570.00	7,570.00	7,494.38	6,710.00	3,157.27	3,157.27	3,784.40	3,435.91
Special deposits	1,115.04	14,449.56	14,448.23	30,400.15	590.00	590.00	485.00	295.00	9,513.72	11,113.22	10,977.72	7,137.50
Notes receivable	330.00	330.00	970.45	970.45	507.33	507.33	307.33	823.34	86,280.86	86,388.94	76,309.00	45,083.46
Accounts receivable	407,122.74	321,311.94	340,301.71	290,096.78	216,208.58	216,208.58	190,620.67	153,586.04	86,280.86	86,388.94	76,309.00	45,083.46
Total notes and accounts receivable	407,452.74	321,641.94	340,301.71	291,076.23	216,715.91	216,715.91	187,018.00	154,409.38	86,280.86	86,388.94	76,309.00	45,083.46
Less: Reserve for uncollectible accounts	7,801.06	16,118.41	12,127.10	6,053.29	3,740.12	3,740.12	4,301.00	15,400.38	10,885.74	1,877.01	1,568.39	1,572.90
Notes and accounts receivable—net	399,651.68	305,523.53	328,174.61	285,022.94	212,975.79	212,975.79	182,716.97	138,989.00	75,395.12	84,511.93	74,740.61	43,510.56
Materials and supplies	111,037.33	113,667.18	80,425.10	79,229.56	60,509.67	60,509.67	71,162.47	23,054.21	27,174.90	30,732.41	23,613.95	34,917.77
Other current assets	20,381.75	4,935.30	75,093.18	77,842.61								
Total current assets	618,557.71	529,634.90	561,476.57	598,752.38	308,230.36	308,230.36	280,887.07	218,245.18	120,855.88	137,915.66	118,901.92	94,494.90
<b>Tangible property:</b>												
Carrier operating property	1,964,456.70	1,927,524.89	1,802,023.06	1,476,574.68	910,333.22	910,333.22	894,811.77	685,453.39	364,365.92	365,877.00	304,292.30	265,467.08
Less: Reserve for depreciation and amortization	555,322.18	525,706.21	502,878.45	623,264.76	345,871.72	345,871.72	387,631.47	333,528.74	142,086.42	112,470.80	127,929.64	121,009.40
Net carrier operating property	1,409,134.52	1,401,818.68	1,299,144.61	853,309.92	564,461.50	564,461.50	507,180.30	351,924.65	241,379.50	253,406.20	176,362.75	144,457.68
Noncarrier operating property												
Less: reserve for depreciation												
Net noncarrier operating property												
Total tangible property	1,409,134.52	1,401,818.68	1,299,144.61	853,309.92	564,461.50	564,461.50	507,180.30	351,924.65	241,379.50	253,406.20	176,362.75	144,457.68
Intangible property				5,009.11		11,909.87	11,921.88	4,217.50			64,703.69	40,791.50

	Southeastern Motor Lines, Inc.				Arrow Carrier Corporation				Total carrier companies			
	Apr. 30, 1941		12/31/39		Apr. 30, 1941		12/31/39		Apr. 30, 1941		12/31/39	
	Adjusted	Per books	Adjusted	Per books	Adjusted	Per books	Adjusted	Per books	Adjusted	Per books	Adjusted	Per books
Investments and advances to affiliates and others	21,801.44	112,017.72	17,688.44	12,275.00	8,563.29	8,563.29	8,563.29	8,563.29	2,500.00	112.80	112.80	115.80
Prepayments and other deferred debits	159,314.55	73,854.43	74,354.76	63,435.77	79,359.48	79,359.48	79,359.48	79,359.48	46,431.78	62,639.39	38,674.39	27,943.79
Total assets.	2,200,108.22	2,122,324.48	1,956,273.49	1,592,782.18	990,064.63	972,871.85	998,064.33	923,319.11	425,317.27	494,702.61	384,627.06	397,703.24
<b>Assets</b>												
<b>Current assets:</b>												
Cash	\$6,533.19	\$6,618.78	\$11,212.67	\$7,130.37	\$62,452.69	\$62,452.69	\$21,454.81	\$19,907.32	\$510,497.82	\$498,917.14	\$538,549.94	\$468,231.51
Working funds					8,798.00	3,265.00	3,245.00	3,815.74	70,374.38	77,458.23	71,983.78	64,530.22
Special deposits	745.00	745.00	745.00	470.00	527.50	827.80	577.50	195.80	19,472.26	25,965.28	34,833.45	21,712.51
Notes receivable									37,267.33	37,268.38	3,897.33	1,802.79
Accounts receivable	44,543.23	44,759.80	25,360.05	24,802.82	128,425.53	125,425.53	98,599.33	99,329.04	1,735,092.70	1,578,675.11	1,319,251.26	1,019,336.14
Total notes and accounts receivable	44,543.23	44,759.80	25,360.05	24,802.82	128,425.53	125,425.53	98,599.33	99,329.04	1,772,350.03	1,615,933.49	1,323,148.59	1,021,138.93
Less: Reserve for uncollectible accounts	797.29	655.83	1,004.34	864.34	2,621.43				42,819.43	79,262.36	98,810.60	64,342.69
Notes and accounts receivable-net	43,745.94	44,103.97	24,355.61	23,948.48	125,804.10	125,425.53	98,599.33	99,329.04	1,729,530.60	1,536,671.13	1,224,337.99	956,796.24
Materials & supplies	8,166.08	8,166.08	8,957.21	3,534.19	41,095.70	14,872.63	24,573.03	12,207.64	429,385.16	416,622.30	346,923.16	274,635.69
Other current assets									31,822.80	16,365.30	86,501.15	78,520.53
Total current assets	59,190.21	59,633.83	45,271.49	35,083.04	233,174.99	206,573.35	146,449.67	134,455.24	2,791,083.02	2,578,929.47	2,126,106.47	1,864,428.70

Comparative Balance Sheet of the Carrier Companies Included in the I. C. C. Application as of April 30, 1941, December 31, 1940, and December 31, 1939—Continued

Assets	Southeastern Motor Lines, Inc.				Arrow Carrier Corporation				Total carrier companies			
	Apr. 30, 1941		12/31/40		Apr. 30, 1941		12/31/39		Apr. 30, 1941		12/31/39	
	Adjusted	Per books	per books	per books	Adjusted	Per books	per books	per books	Adjusted	Per books	per books	per books
Tangible property:												
Carrier operating property:												
Less: Reserve for depreciation & amortiz.	\$116,556.12	\$116,556.12	\$98,907.74	\$59,398.41	\$1,671,254.42	\$1,670,446.47	\$1,704,734.93	\$1,491,467.41	\$8,408,903.28	\$8,333,138.55	\$7,853,739.24	\$6,966,503.81
Net carrier operating property	28,964.66	30,201.67	24,643.71	10,187.99	961,587.46	965,206.42	940,402.13	847,661.09	3,722,493.90	3,697,591.50	3,773,931.90	3,400,126.12
Noncarrier operating property	87,001.46	86,354.45	62,264.03	49,210.42	709,666.96	705,240.05	764,322.80	843,806.32	4,086,409.38	4,035,547.05	4,099,807.74	3,406,377.60
Less: Reserve for depreciation					58,651.08	58,651.08	27,818.88		62,221.37	62,221.57	31,389.37	3,472.45
Net noncarrier operating property					84.12	84.12	77.65		2,969.48	2,969.06	2,865.21	2,645.92
Total tangible property	87,001.46	86,354.45	62,264.03	49,210.42	58,666.96	58,666.96	27,741.23		59,251.89	59,251.89	28,494.16	826.53
Intangible property:												
Investments & advances to affiliates & others	510.00	510.00	510.00	49,210.42	793,807.61	793,807.61	792,044.03	843,806.32	4,745,661.27	4,694,796.94	4,118,301.90	3,407,204.22
Prepayments and other deferred debits	18,284.12	8,444.01	9,043.24	11,664.33	30,033.23	30,033.23	31,420.35	23,569.43	126,121.04	126,121.04	130,502.75	78,576.07
Total assets	165,586.79	165,470.46	124,884.26	109,542.56	1,113,388.98	1,096,839.05	1,040,914.42	1,038,503.01	8,614,211.45	8,413,406.57	7,944,030.91	5,961,674.93

197	Consolidated Motor Lines, Inc.				McCarthy Freight System, Inc.				M. Moran Transportation Lines, Inc.			
	May 17, 1941		12/31/40 per books	12/31/39 per books	4/19/41 Adjusted	5/17/41 per books	12/31/40 per books	12/31/39 per books	April 26, 1941		12/29/40 per books	12/30/39 per books
	Adjusted	Per books							Adjusted	Per books		
Liabilities and capital												
Current liabilities:												
Accounts payable	\$196,400.44	\$196,400.44	\$192,337.91	\$225,503.61	\$155,065.15	\$133,763.69	\$108,404.00	\$105,815.46	\$226,430.10	\$128,119.87	\$291,269.36	\$220,305.48
Notes payable			3,500.00	5,000.00	14,000.00	23,700.00	26,200.00	41,381.86				
Wages payable	49,318.83	49,918.83	52,775.46	35,336.17	21,792.69	23,434.90	25,019.76	16,256.92	35,405.94	35,405.94	23,759.30	13,680.01
C. O. D.'s on Freight	604.99	604.99	1,871.97	1,377.48	8,305.32	11,931.26	6,014.40	6,059.51	1,342.15	1,342.15	605.59	2,255.56
Texas accident	167,203.89	144,315.36	114,358.46	58,703.65	96,301.24	98,907.61	67,334.04	31,014.18	64,077.35	77,879.01	38,072.07	14,516.26
Other current liab	89,741.61	89,741.61	90,000.81	47,498.58	8,577.26	3,550.69	5,360.12	6,178.77	2,546.34	3,346.20	6,149.61	3,875.41
Total current liab	503,959.76	481,071.33	424,884.61	373,509.49	304,041.66	295,318.15	238,532.41	206,686.70	330,401.98	245,069.17	339,855.03	254,121.72
Equipment & other long term obligations:												
Equipment obligations	331,515.67	331,515.67	175,947.20	321,927.10	147,829.44	157,530.44	123,897.83	172,737.49	294,533.00	294,533.00		
Other long term oblig	58,722.65	58,722.65	20,215.00		14,700.00	5,100.00	6,000.00	16,867.35				
Total equipmt. & other long term oblig	390,238.32	390,238.32	196,162.20	321,927.10	162,529.44	162,630.44	129,897.83	189,604.84	294,533.00	294,533.00		
Advances from affiliated companies & others						3,119.42	4,940.42	6,580.15			116,961.27	92,541.59
Reserves for injury, loss and damage	36,061.61	36,061.61	25,353.45	17,590.90	3,215.25	2,121.75	2,155.04	2,440.34	9,301.42	5,029.60	49,706.06	26,821.01
Deferred income (3/17/41)	47,725.27											
Capital stock:												
Preferred, conv. stk	11,445.00	11,445.00	11,445.00	11,445.00	101,000.00	101,000.00	101,000.00	101,000.00	35,400.00	35,400.00	35,400.00	35,400.00
Common, conv. stk												
Capital stk. subscribed	11,445.00	11,445.00	11,445.00	11,445.00	101,000.00	101,000.00	101,000.00	101,000.00	35,400.00	35,400.00	35,400.00	35,400.00
Total capital stk												
Unpaid dividends												
Unpaid dividends & pre-												
ferred surplus	479,486.04	479,486.04	419,486.04	419,486.04	41,894.70	41,894.70	41,894.70	41,894.70				26,735.10
Unpaid surplus	316,915.12	346,301.28	143,104.57	35,940.69	289,970.28	271,040.17	161,691.10	72,806.89	318,966.65	304,245.80	174,157.16	126,284.21
Earned surplus												
Total unappropriated surplus	735,391.16	765,787.29	562,590.61	455,426.73	331,864.98	312,934.87	203,583.80	114,701.59	318,966.65	304,245.80	174,157.16	156,019.31
Total capital and surplus	746,946.16	777,232.29	574,039.61	466,871.97	432,864.95	413,034.87	304,586.90	215,701.59	354,366.65	339,545.80	209,557.16	194,419.31
Total liabilities and capital	1,724,941.12	1,664,603.45	1,220,435.57	1,179,808.56	902,651.30	877,154.63	690,120.36	621,022.62	1,112,564.22	1,009,759.14	756,080.96	577,965.63

Although the assets of Consolidated Motor Lines, Inc. and McCarthy Freight System, Inc., and Moran Transportation Lines, Inc., are reflected as of the dates indicated, the surpluses have been adjusted to Apr. 30, 1941.

196	Liabilities and capital	Horton Motor Lines, Inc.				Bernwell Brothers, Inc.				Transportation, Inc.			
		4/30/41		12/31/40	12/31/39	4/30/41		12/31/40	12/31/39	4/30/41		12/31/40	12/31/39
		Adjusted	Per books	per books	per books	Adjusted	Per books	per books	per books	Adjusted	Per books	per books	per books
	Current liabilities:												
	Accounts payable	\$128,956.51	\$125,726.92	\$118,510.97	\$99,067.57	\$143,994.48	\$162,124.88	\$101,959.14	\$207,867.67	\$204,975.02	\$185,198.66	\$150,328.94	
	Notes payable	36,728.42	36,728.42	26,199.44	15,052.12	85,127.56	98,338.94	14,340.50	91,804.46	91,804.46	86,739.37	10,731.13	
	Wages payable	44,280.95	44,280.95	32,513.40	42,172.67	13,861.25	18,430.80	6,529.16	5,771.66	5,771.66	5,063.91	7,186.40	
	C. O. D's unremitted	109,067.96	107,432.87	159,038.19	130,465.89	(50.30)	20.96	22.90					
	Taxes accrued	3,455.92	4,517.80	4,965.94	7,058.26	51,128.87	48,500.30	54,694.23	6,460.54	6,460.54	10,951.04	11,303.82	
	Other current liabilities	385,490.88	411,695.72	341,847.84	293,846.54	1,063.39	3,462.56	339.56	23,540.81	21,615.05	10,645.99	15,276.45	
	Total current liabilities					295,155.16	330,878.96	177,907.56	336,465.14	331,026.73	267,681.47	210,534.29	
	Equipment and other long term obligations:												
	Equipment obligations												
	Other long term obligations												
	Total long term obligations												
	Total equipment and other long term obligations												
	Advances from affiliated companies and others												
	Deferred income (5/1-17/41)												
	Capital stock:												
	Preferred capital stock	183,930.17	183,930.17	199,965.38	86,476.39	106,983.47	99,205.63	74,881.26	106,619.86	107,464.37	57,178.60	59,610.24	
	Common capital stock	12,542.37	11,929.51	13,937.66	20,025.80	27,750.00	48,250.00	25,020.00	1,218.10	1,218.10	2,465.21	5,420.35	
	Capital Stk. subscribed	53,320.00	53,320.00	48,320.00	33,980.00	32,300.00	32,300.00	32,300.00	28,757.17	28,757.17	26,277.17	14,000.00	
	Total capital stock	5,520.00	5,520.00	5,740.00	1,901.50	100,000.00	100,000.00	100,000.00	25,000.00	25,000.00	25,000.00	23,700.00	
	Total capital stock	270,920.00	276,920.00	296,140.00	250,661.50	132,300.00	132,300.00	132,300.00	25,000.00	25,000.00	25,000.00	63,730.00	
	Unappropriated surplus:												
	Earned surplus and premiums on stock	10,000.00	10,000.00	10,000.00	10,000.00								
	Earned surplus	1,346,215.80	1,233,849.08	1,126,362.59	823,131.95	379,331.14	293,060.32	213,212.15	77,096.06	116.14	(26,968.37)	5,467.20	
	Total unappropriated surplus	1,356,215.80	1,243,849.08	1,136,362.59	833,131.95	379,331.14	293,060.32	213,212.15	77,096.06	116.14	(26,968.37)	(46,891.67)	
	Total capital and surplus	1,627,135.90	1,514,766.16	1,462,592.59	1,085,793.45	511,431.14	523,518.36	545,512.15	(22,096.06)	25,116.14	(1,968.37)	14,836.33	
	Total liabilities and capital	2,390,108.22	2,122,324.48	1,956,273.49	1,502,782.16	990,084.63	998,694.33	823,319.11	423,317.27	494,702.51	364,627.06	297,703.24	

199	Liabilities and capital	Southeastern Motor Lines, Inc.				Arrow Carrier Corp.				Total carrier companies			
		4/30/41		12/31/39		4/30/41		12/31/40		4/30/41		12/31/39	
		Adjusted	Per books	Per books	Per books	Adjusted	Per books	Adjusted	Per books	Adjusted	Per books	Per books	Per books
Current liabilities:													
Accounts payable		\$22,808.17	\$23,304.83	\$20,497.02	\$64,373.28	\$64,373.28	\$62,191.35	\$63,072.95	\$1,156,017.80	\$1,020,778.53	\$1,173,100.40	\$664,670.23	
Notes payable		25,000.00	4,300.00	5,000.00	5,000.00	5,000.00	5,000.00	13,000.00	269,890.44	269,890.44	240,686.25	312,805.61	
Wages payable		326.62	3,546.36	3,546.36	31,714.46	31,714.46	14,093.27	23,772.40	205,396.94	177,075.90	150,479.59	249,924.02	
C. O. D.'s unremitted		752.54	589.52	306.46	12,879.92	12,879.92	12,879.92	9,922.02	23,834.53	27,430.47	9,922.02	24,924.02	
Taxes accrued		14,829.56	10,137.51	13,339.79	11,142.69	42,531.77	23,892.63	46,960.24	602,220.30	610,942.10	46,775.64	358,306.96	
Other current liab.					1,604.99	12,363.00		4,994.02	141,255.23	125,467.79	90,604.95	85,241.08	
Total current liabilities		63,726.89	58,164.88	42,394.55	171,859.43	139,375.28	146,281.87	183,730.63	2,301,109.80	2,258,506.32	1,82,337.66	1,713,427.99	
Equipment & other long term oblig.													
Equipment oblig.		300.00	300.00	1,805.00	24,797.71	24,797.71	43,047.27	103,060.76	1,012,479.17	1,023,124.66	500,480.93	753,158.86	
Other long term oblig.					12,000.00	12,000.00	12,000.00	12,500.00	124,369.75	114,790.75	84,533.21	59,867.73	
Total equip. & other long term obligations		300.00	300.00	1,805.00	36,797.71	36,797.71	55,047.27	115,560.76	1,136,849.92	1,137,915.41	585,014.14	812,966.59	
Advances from affiliated Cos. & others									345,523.47	349,482.89	331,173.24	199,007.13	
Reserve for injury, loss & damage									65,563.60	85,642.77	91,132.47	76,878.05	
Deferred income (5-1-17-41)									47,735.27				
Capital stock:													
Preferred cap. stk.													
Common capital stk.		50,000.00	50,000.00	50,000.00	138,000.00	138,000.00	138,000.00	138,000.00	223,620.00	223,620.00	214,620.00	214,280.00	
Cap. stk. subscribed					98,825.00	98,825.00	98,825.00	98,825.00	653,750.00	653,750.00	653,750.00	652,480.00	
Total capital stk.		50,000.00	50,000.00	50,000.00	236,825.00	236,825.00	236,825.00	236,825.00	877,370.00	877,370.00	868,370.00	866,760.00	
Unappropriated surplus:													
Unearned surplus & pre-mings on stock		51,558.90	56,975.56	30,684.71	667,876.79	667,876.79	673,841.00	667,876.79	3,292,836.62	3,277,567.44	2,504,822.36	1,801,351.14	
Farred surplus													
Total unapp. surplus		51,558.90	56,975.56	30,684.71	667,876.79	667,876.79	673,841.00	667,876.79	3,292,836.62	3,277,567.44	2,504,822.36	1,801,351.14	
Total cap. & surplus		10,508.90	106,975.85	80,684.71	904,701.79	910,666.00	889,565.28	775,211.62	4,627,109.33	4,611,436.18	3,824,313.10	3,154,795.68	
Total liabilities & capital		165,985.79	165,470.46	124,884.25	100,542.58	1,113,536.93	1,086,839.05	1,040,914.42	8,614,211.48	8,413,405.57	7,041,000.61	5,951,674.93	

**Comparative Balance Sheet of the Non-Carrier Companies Included in the I. C. C. Application as of April 30, 1941, December 31, 1940 & December 31, 1939**

Assets	Southern New England Terminals, Inc.				Brown Equipment & Mfg. Co., Inc.				Conger Realty Co., Inc.				Barnwell Warehouse & Brokerage Co.				Total Noncarrier Companies			
	4/30/41 per books	4/30/41 adjusted	12/31/40 per books	12/31/39 per books	April 30, 1941		12/31/40 per books	12/31/39 per books	April 30, 1941		12/31/40 per books	12/31/39 per books	4/30/41 adjusted	4/30/41 per books	12/31/40 per books	12/31/39 per books	4/30/41 adjusted	4/30/41 per books	12/31/40 per books	12/31/39 per books
					Adjusted	Per books			Adjusted	Per books										
Current assets:																				
Cash	\$1,175.56	\$1,175.56	\$23,740.56	\$1,158.48	\$5,353.27	\$5,389.14	\$341.14	\$10,572.03	\$1,968.41	\$1,968.41	\$641.80	\$5,153.95	\$323.70	\$426.70	\$73.66	\$376.71	\$8,820.94	\$8,856.81	\$24,797.16	\$17.2
Accounts receivable	284.00	284.00	284.00	11,094.41	3,157.50	3,692.20			3,597.61		1,600.00	600.00	140.00	140.00	9,041.36	4,790.13	7,179.11	4,116.20	10,925.36	16.4
Notes receivable	350.00	350.00	350.00														350.00	350.00	350.00	
Materials and supplies					206,592.95	152,685.05	116,008.24	86,587.05									206,592.95	152,685.05	116,008.24	86.5
Total current assets	1,809.56	1,809.56	24,374.56	12,252.89	215,103.72	161,766.39	116,349.38	97,159.08	5,566.02	1,968.41	2,241.80	5,753.95	463.70	463.70	9,115.02	5,166.84	222,943.00	166,008.06	152,080.76	121.3
Tangible property:																				
Carrier operating property	218,943.18	218,943.18	176,435.67	108,281.99					432,932.44	419,056.05	420,478.44	350,619.39	26,819.62	26,819.62	26,705.50	23,323.42	678,695.24	678,695.24	623,683.61	482.2
Less: Reserve for depreciation and amortization	18,145.53	15,984.40	17,649.58	14,105.63					13,115.71		11,700.91	8,388.96	7,720.10	7,720.10	7,418.06	6,940.26	36,820.21	38,742.02	36,768.55	29.4
Net carrier operating property	200,797.65	202,958.78	158,786.09	94,176.36					419,816.73	419,056.05	408,777.53	342,230.43	19,099.52	19,099.52	19,351.44	16,383.16	641,875.03	639,953.22	586,915.06	452.8
Noncarrier operating property					56,957.20	48,233.11	45,778.62	36,132.20												
Less: Reserve for depreciation and amortization					13,283.49	9,691.69	7,611.28	2,029.10									56,957.20	48,233.11	45,778.62	36.13
Net noncarrier operating property					43,673.71	38,541.42	38,167.34	34,103.10									43,673.71	38,541.42	38,167.34	34.1
Total tangible property	200,797.65	202,958.78	158,786.09	94,176.36	43,673.71	38,541.42	38,167.34	34,103.10	419,816.73	419,056.05	408,777.53	342,230.43	19,099.52	19,099.52	19,351.44	16,383.16	685,548.74	677,494.64	625,082.40	486.9
Investments and advances to affiliated companies					182,437.71	183,930.17	199,985.38	86,476.39	900.00	900.00	1,800.00	900.00	49,464.86	49,464.86	40,300.00	40,300.00	232,802.57	234,295.03	242,685.38	127.6
Intangible property	310.82		310.82	310.82		103.50	103.50													
Prepayments and other deferred debits	800.83	714.74	828.62	422.11	1,874.71	7,356.56	1,773.26	1,214.69	6,577.86	6,361.13	1,144.94	1,907.39	1,633.15	1,633.15	1,783.39	889.80	10,800.46	16,211.67	5,532.21	4.4
Total assets	263,778.86	265,483.08	184,300.69	107,162.18	443,089.85	391,698.04	356,380.86	219,056.76	432,860.61	428,285.59	413,664.27	350,852.77	70,661.23	70,661.23	70,549.85	62,739.80	1,152,094.77	1,094,423.72	1,025,195.07	739.8

Note: The book figures are stated as reflected in the books of the respective companies. The adjusted figures are subject to further audit and revision.

		Southern New England Terminals, Inc.				Brown Equipment & Mfg. Co., Inc.				Conger Realty Co., Inc.				Barnwell Warehouse & Brokerage Co.				Total noncarrier companies			
201	Liabilities and capital	4/30/41	4/30/41	12/31/40	12/31/39	April 30, 1941		12/31/40	12/31/39	April 30, 1941		12/31/40	12/31/39	4/30/41	4/30/41	12/31/40	12/31/39	4/30/41	4/30/41	12/30/40	12/31/39
		per books	Adjusted	per books	per books	Adjusted	per books	per books	per books	Adjusted	per books	per books	per books	Adjusted	per books	per books	per books	Adjusted	per books	per books	per books
	Current liabilities:																				
	Notes payable					\$27,500.00	\$27,500.00	\$30,000.00										\$27,500.00	\$27,500.00	\$30,000.00	\$0
	Accounts payable			\$2,672.39	\$18,375.89	93,119.92	55,403.00	56,982.90	\$81,022.67	\$456.10	\$456.10	\$5,066.60	\$61,868.04	\$0.84	\$0.84	\$107.25	\$448.80	\$27,500.00	\$27,500.00	\$30,000.00	\$0
	Wages payable					1,947.21		1,133.95	1,213.80								57.88	93,576.86	55,859.94	64,829.14	161.32
	Taxes accrued	\$2,572.99	\$1,139.89	492.86		52,241.95	51,060.20	53,879.66	1,345.67	38,312.62	37,234.66	24,157.85	1,291.50	2,532.21	2,532.21	3,767.07	1,291.50	1,047.21	1,143.95	2.50	
	Other current liabilities	732.31	363.67	3,229.41	139.64	139.02		264.25	85.40	826.00		300.00		178.75	178.75	5.00	646.01	94,226.67	93,490.06	82,297.44	1.89
	Total current liabilities	3,305.30	1,503.56	6,394.36	18,515.53	174,048.10	138,963.20	142,270.76	83,667.54	39,594.72	37,690.76	29,524.45	61,898.04	2,711.80	2,711.80	3,879.32	2,456.69	217,858.18	177,671.06	182,068.89	165.50
	Other long-term obligations	99,033.28	99,033.28	102,499.96	49,250.00					165,000.00	165,000.00	180,000.00	240,000.00	10,500.00	10,500.00	11,000.00	13,000.00	274,533.28	274,533.28	293,499.96	302.20
	Advances from affiliated companies	73,009.16	73,369.16	51,183.12	18,000.00		900.00			97,706.88	94,329.28	97,706.88						171,076.04	168,238.44	148,890.00	18.00
	Capital stock:																				
	Preferred stock	20,000.00	20,000.00	20,000.00	20,000.00	100,000.00	100,000.00	100,000.00	20,500.00	100,000.00	100,000.00	100,000.00	300.00	22,800.00	22,800.00	22,800.00	22,800.00	22,800.00	22,800.00	22,800.00	22.80
	Common stock	8,431.12	11,577.08	4,222.65	1,336.65	169,041.75	156,834.84	114,110.10	114,789.22	30,559.01	31,265.55	6,732.94	48,684.71	32,649.43	32,649.43	30,870.53	2,000.00	222,000.00	222,000.00	222,000.00	42.90
	Earned surplus																	243,627.27	229,180.94	155,930.22	787.30
	Total capital stock and surplus	28,431.12	31,577.08	24,222.65	21,336.65	269,041.75	256,834.84	214,110.10	135,289.22	130,559.01	131,265.55	106,732.94	48,984.73	57,449.43	57,449.43	53,670.53	47,283.11	488,627.27	473,980.94	400,736.22	253.00
	Total liabilities and capital	263,778.86	265,483.08	184,300.69	107,162.18	443,089.85	391,698.04	356,380.86	219,056.76	432,860.61	428,285.59	413,664.27	350,852.77	70,661.23	70,661.23	70,549.85	62,739.80	1,152,094.77	1,094,423.72	1,025,195.07	739.80

NOTE: The book figures are stated as reflected in the books of the respective companies. The adjusted figures are subject to further audit and revision.

202 Summary of the comparative balance sheet of the carrier and noncarrier companies included in I.C.C. application as of April 30, 1941, December 31, 1940, and December 31, 1939

	Carrier companies				Noncarrier companies				Total all companies			
	April 30, 1941		12/31/40		April 30, 1941		12/31/40		April 30, 1941		12/31/40	
	Adjusted	Per books	per books	per books	Adjusted	Per books	per books	per books	Adjusted	Per books	per books	per books
<b>ASSETS</b>												
<b>Current assets:</b>												
Cash	\$510,497.82	\$495,917.14	\$503,510.94	\$468,231.51	\$5,820.94	\$5,856.81	\$24,797.16	\$17,291.17	\$519,318.76	\$501,773.95	\$388,347.10	\$445,492.68
Working funds	70,374.38	77,458.23	71,993.78	64,530.22					70,374.38	77,458.23	71,993.78	64,530.22
Special deposits	19,472.26	35,865.28	34,833.45	21,712.51					19,472.26	35,865.28	34,833.45	21,712.51
Notes receivable	37,257.33	37,258.38	3,897.33	1,802.79	350.00	350.00	330.00		37,257.33	37,608.38	4,247.33	1,802.79
Accounts receivable	1,735,092.70	1,578,675.11	1,319,291.26	1,019,336.14	7,376.11	4,116.20	10,925.36	16,484.54	1,742,271.81	1,582,791.31	1,330,176.62	1,035,820.66
Total notes and accounts receivable	1,772,350.03	1,615,933.49	1,323,188.59	1,021,138.93	7,529.11	4,466.20	11,275.36	16,484.54	1,779,879.14	1,620,399.69	1,334,423.95	1,037,623.47
Less: Reserve for uncollectible assets	42,819.43	79,202.36	96,810.00	64,342.69					42,819.43	79,202.36	96,810.00	64,342.69
Notes and accounts receivable—Net	1,729,530.60	1,536,731.13	1,226,378.59	956,796.24	7,529.11	4,466.20	11,275.36	16,484.54	1,737,059.71	1,541,197.33	1,237,613.95	973,280.78
Materials and supplies	429,385.16	416,622.39	336,923.16	274,635.69	296,592.95	162,685.05	116,008.24	86,587.05	635,978.11	569,307.44	462,931.40	361,272.74
Other current assets	31,822.80	16,395.30	86,501.15	78,620.53					31,822.80	16,395.30	86,501.15	78,620.53
Total current assets	2,791,083.02	2,578,929.47	2,128,199.47	1,864,426.70	222,943.00	166,608.09	152,089.76	120,332.76	3,014,026.02	2,744,937.83	2,390,100.33	1,994,799.40

Summary of the comparative balance sheet of the carrier and noncarrier companies included in I. C. C. application  
as of April 30, 1941, December 31, 1940, and December 31, 1939—Continued

	Carrier companies				Noncarrier companies				Total all companies			
	April 30, 1941		12/31/40		April 30, 1941		12/31/40		April 30, 1941		12/31/40	
	Adjusted	Per books	per books	per books	Adjusted	Per books	per books	per books	Adjusted	Per books	per books	per books
<b>ASSETS—continued</b>												
<b>Tangible property:</b>												
Carrier operating property	\$8,406,903.28	\$8,333,138.35	\$7,863,739.24	\$6,806,503.81	\$678,693.21	\$678,693.24	\$623,683.61	\$492,224.80	\$6,087,908.52	\$9,011,533.79	\$8,497,422.85	\$7,378,728.61
Less: Reserve for depreciation and amortization	3,722,493.90	3,697,591.50	3,773,931.50	3,490,126.12	36,829.21	36,742.02	36,768.85	26,434.85	3,759,314.11	3,737,333.62	3,819,790.05	3,519,560.97
Net carrier operating property	4,684,409.38	4,635,547.05	4,089,807.74	3,406,377.69	641,873.03	638,953.22	586,915.06	452,789.95	2,328,594.41	5,274,200.27	4,677,632.80	3,859,167.64
<b>Noncarrier operating property:</b>												
Carrier operating property	62,221.37	62,221.57	31,389.37	3,472.45	56,957.20	48,233.11	45,378.62	36,132.20	119,178.57	110,454.68	77,167.99	30,604.65
Less: Reserve for depreciation and amortization	2,959.48	2,969.68	2,805.21	2,645.92	13,283.49	9,691.69	7,611.28	2,029.10	16,252.97	12,661.37	10,596.49	4,675.92
Net noncarrier operating property	59,251.89	59,251.89	28,494.16	826.53	43,673.71	38,541.42	38,167.34	34,103.10	102,925.60	97,793.31	66,561.50	34,928.63
<b>Total tangible property**</b>	4,743,661.27	4,694,798.94	4,118,301.90	3,407,204.22	685,545.74	677,434.64	623,082.40	486,892.05	5,431,210.01	5,372,238.58	4,743,834.30	3,894,097.27
<b>Intangible property:</b>												
Investments and advances to affiliates and others	202,968.69	357,364.77	100,285.19	137,221.58	232,802.57	234,298.03	242,088.38	127,676.39	435,793.36	591,636.80	402,370.57	264,897.95
Prepayments and other deferred debits	874,476.50	656,191.35	506,831.40	474,245.76	10,900.46	16,211.67	5,832.21	4,404.99	855,276.96	672,403.02	512,363.51	478,740.75
<b>Total assets</b>	8,614,211.46	8,413,405.57	7,044,039.61	5,961,674.93	1,152,094.77	1,094,423.72	1,025,193.07	739,811.51	6,760,366.25	6,597,826.29	5,269,225.98	6,701,496.44

LIABILITIES AND CAPITAL												
Current liabilities:												
Accounts payable	1,156,017.80	1,020,778.53	1,173,100.40	986,670.22	93,576.86	55,859.04	64,829.14	161,324.48	1,249,594.00	1,076,038.47	1,257,069.54	1,147,994.76
Notes payable	360,660.44	269,360.44	246,038.25	112,805.61	27,560.00	27,500.00	30,000.00	448,867	268,190.44	206,860.44	276,038.25	143,024.41
Wages payable	207,081.40	205,366.90	177,675.96	150,479.59	1,017.21	1,143.95	1,143.95	2,503.30	208,128.61	205,366.90	178,819.91	12,2,964.89
C. O. D.'s unremitted	23,534.53	27,460.47	9,102.46	19,924.02					23,534.53	27,460.47	9,102.46	19,924.02
Taxes accrued	602,229.30	610,042.10	485,775.64	538,996.96	94,226.67	93,400.00	82,267.44	1,991.68	696,446.97	703,412.16	569,073.08	390,298.64
Other current liabilities	141,263.33	125,667.79	99,604.95	85,241.08	1,807.44	911.06	3,795.36	237.54	142,802.72	126,378.85	94,403.31	85,478.62
Total current liabilities:	2,391,109.80	2,258,506.32	2,182,357.66	1,713,127.48	217,858.18	177,671.06	182,098.80	166,507.80	2,698,967.08	2,436,177.38	2,364,426.55	1,879,835.28
Equipment & other long-term obligations:												
Equipment obligations	1,012,479.17	1,023,124.66	500,480.95	733,158.86					1,012,479.17	1,023,124.66	500,480.95	733,158.86
Other long term obligations	124,390.75	114,760.75	84,553.21	50,807.73	274,533.26	274,533.28	268,090.96	302,259.00	396,924.03	386,354.03	378,083.17	362,057.73
Total equipment & other long term obligations	1,136,869.92	1,137,915.41	585,034.14	812,966.59	274,533.28	274,533.28	268,090.96	302,259.00	1,411,403.20	1,412,448.69	878,534.10	1,115,216.59
Advances from affiliated companies and others	345,823.47	349,482.89	351,173.24	169,607.13	171,076.04	168,234.44	148,890.00	18,690.00	516,899.57	517,721.33	509,065.24	217,966.13
Reserves for injuries, loss & damage	65,563.69	55,642.77	91,152.47	76,878.05					65,563.69	55,642.77	91,152.47	76,878.05
Deferred income (May 1-17, 1941)	47,748.27								47,748.27			
Capital stock:												
Preferred capital stock	223,620.90	223,620.90	218,620.90	214,280.00	22,800.00	22,800.00	22,800.00	22,800.00	246,420.00	246,420.00	241,420.00	237,060.00
Common capital stock	634,750.00	633,750.00	633,750.00	632,400.00	222,000.00	222,900.00	226,000.00	42,900.00	855,750.00	855,750.00	855,750.00	675,380.00
Capital stock subscribed	5,226.00	5,320.00	5,740.00	4,601.50					5,520.00	5,520.00	5,520.00	4,901.50
Total capital stock	963,600.00	962,690.90	858,110.90	851,361.50	244,800.00	244,800.00	244,800.00	65,700.00	1,107,690.00	1,167,690.00	1,102,910.00	917,061.50
Unappropriated surplus:												
Unearned surplus & premiums on stock	471,380.74	471,380.74	471,380.74	506,783.04					471,380.74	471,380.74	471,380.74	506,783.04
Earned surplus	3,292,838.59	3,277,587.44	2,504,822.36	1,806,651.14	343,827.27	228,180.94	155,936.22	187,333.71	3,539,665.60	3,500,798.38	2,660,738.58	1,988,064.85
Total unappropriated surplus	3,764,219.33	3,748,968.18	2,976,203.10	2,307,434.18	343,827.27	228,180.94	155,936.22	187,333.71	4,008,046.60	3,978,140.12	3,132,139.32	2,494,787.89
Total capital and surplus	4,627,109.33	4,911,858.18	3,834,313.10	3,158,795.68	688,627.27	473,980.94	400,736.22	285,033.71	5,115,736.60	5,053,839.12	4,233,049.32	3,411,849.39
Total liabilities and capital	8,614,211.45	8,413,405.57	7,044,030.81	5,961,674.93	1,162,094.77	1,064,423.78	1,023,165.07	739,811.51	9,766,306.25	9,507,229.50	8,069,225.68	6,701,486.44

NOTE.—The adjusted figures are subject to further audit and revision.

## ASSOCIATED TRANSPORT, INC.

Schedule of Depreciation Rates on Revenue Equipment Employed by the Companies Included in the I. C. C. Application for the Years 1937, 1938, 1939, 1940, and as Provided in the Contracts of the Respective Companies

	Motor-carrier companies						Non-carrier companies			
	Consolidated Motor Lines, Inc.	McCarthy Freight System, Inc.	McMoran Transportation Lines, Inc.	Horton Motor Lines, Inc.	Barnwell Brothers	Transportation, Inc.	Southeastern Motor Lines, Inc.	Arrow Carrier Corp.	Brown Equipment & Mfg. Co., Inc.	Barnwell Warehouse & Brokerage Co.
Trucks:										
1937	33 1/2%	25-33 1/2%	25-33 1/2%	32-38 1/2%	33 1/2%	25-33 1/2%		12 1/2%	33 1/2%	33 1/2%
1938	30-35%	25-33 1/2%	25-33 1/2%	33-39%	33 1/2%	25-33 1/2%	25%	12 1/2%	33 1/2%	33 1/2%
1939	25%	25-33 1/2%	25-33 1/2%	33-39%	25-33 1/2%	25-33 1/2%	25%	12 1/2%	33 1/2%	33 1/2%
1940	25%	25-33 1/2%	25-33 1/2%	25-33 1/2%	25-33 1/2%	25-33 1/2%	25%	12 1/2%	33 1/2%	33 1/2%
Per contract	25%	20-25%	25%	25%	4 1/2%	20-25%	25%	12 1/2%	25%	25%
Trailers:										
1937	25%	20-25%	40%	31-40%	33 1/2%	33 1/2%		12 1/2%	None	33 1/2%
1938	25%	20-25%	25-40%	30-42%	25-33 1/2%	33 1/2%	25%	12 1/2%	None	25-33 1/2%
1939	20-25%	20%	25-35%	30-72%	25-33 1/2%	33 1/2%	25%	12 1/2%	None	25-33 1/2%
1940	20-25%	20%	25-33 1/2%	25-33 1/2%	25-33 1/2%	25-33 1/2%	25%	12 1/2%	None	25-33 1/2%
Per contract	20-25%	20-25%	20-25%	20-25%	20-25%	20-25%	20-25%	10%	None	20-25%
Trailers:										
1937	16 2/3%	25%	20-75%	15-24%	25%	35-163 1/2%		10%	None	25%
1938	16 2/3%	12 1/2%	16 2/3%	16-66%	25%	35-163 1/2%	20%	10%	None	20%
1939	14 2/3%	12 1/2%	16 2/3%	17-66%	25%	35-163 1/2%	20%	10%	None	20%
1940	14 2/3%	12 1/2%	16 2/3%	11-121 1/2%	14 2/3%	35-163 1/2%	20%	10%	None	14 2/3%
Per contract	14 2/3%	14 2/3%	14 2/3%	10%	14 2/3%	14 2/3%	14 2/3%	10%	None	14 2/3%

NOTE.—Wherever more than one percentage appears, the smaller percentage applies to heavy equipment.

## EXHIBIT B-6

ASSOCIATED TRANSPORT, INC.

Comparative statement of income, profit and loss of the carrier companies indicated in the I. C. C. application for the calendar years 1939, 1940 and four months ended April

	Consolidated Motor Lines, Inc.			McCarthy Freight System, Inc.			M. Moran Transportation Lines, Inc.			Acct. No.	Horion Motor Lines, Inc.			Barwell Brothers, Inc.			Transportation	
	5 periods 5/17	8 periods 12/31	12 months 1/1 to 12/31	4 periods 4/19	9 periods 12/31	12 months 1/1 to 12/31	4 months 4/25	8 months 12/27	12 months 12/27		4 months 4/1/39	8 months 12/31	12 months 1/1 to 12/31	4 months to 4/30	8 months to 12/31	12 months 1/1 to 12/31	4 months to 4/30	8 months to 12/31
Operating revenue:																		
1941	\$2,075,870.82	\$3,677,000.00	\$5,752,870.82	\$892,772.53	\$1,780,218.00	\$2,472,990.53	\$1,040,084.41	\$2,072,324.00	\$3,712,664.41	3000	\$1,750,490.52	\$1,908,379.82	\$3,775,076.37	\$872,836.20	\$1,750,000.00	\$2,882,836.20	\$501,535.63	\$1,215,287.21
1940	1,578,776.32	2,986,762.84	4,565,539.36	532,215.15	1,369,398.89	1,901,634.04	836,351.66	1,978,528.01	2,811,809.67		1,284,152.38	2,459,541.31	1,270,093.69	641,454.07	1,425,216.64	2,039,670.71	370,045.47	837,640.31
1939			4,511,455.85			1,682,304.81			2,535,316.42				3,820,667.46		1,879,089.51			
1941 over 1940	497,094.50	690,237.16	1,187,331.46	100,537.38	410,819.11	571,356.49	203,732.75	603,995.99	900,744.74		466,341.14	1,458,838.51	1,504,982.68	191,382.13	324,783.36	843,165.49	131,490.16	377,646.90
1941 over 1939			1,241,414.97			790,685.72			1,177,267.96				1,949,412.95		705,745.60			
Equip. main. & gar. ex.:										1000								
1941	190,195.30	344,800.00	534,995.30	66,019.70	169,476.00	235,495.70	136,500.49	286,863.89	433,863.40		195,519.56	334,300.76	629,839.32	71,670.35	460,190.00	233,673.59	67,382.54	133,417.95
1940	161,315.96	286,886.04	448,202.00	60,155.38	132,562.79	192,718.37	104,850.58	216,613.10	351,463.08		170,120.31	377,635.44	547,775.75	65,811.76	337,173.70	263,673.59	20,819.87	109,185.03
1939			424,671.23			193,321.53			319,929.64				458,887.31			215,609.02		
1941 over 1940	28,879.34	57,913.96	86,793.30	5,864.32	36,913.21	42,777.33	31,649.91	50,249.80	81,899.81		25,399.25	56,665.32	82,063.57	5,858.59	22,916.30	69,839.80	16,562.67	26,232.92
1941 over 1939			110,324.07			42,174.17			131,943.11				170,968.01		18,094.31			
Transportation ex.:										4200								
1941	355,597.39	649,500.00	1,005,067.39	193,292.71	498,461.00	691,753.71	2,345,254.70	1,024,111.00	1,410,363.70		310,900.21	600,978.32	1,398,378.73	242,933.63	485,904.00	717,065.83	107,317.14	275,129.75
1940	290,059.31	502,525.16	792,584.47	159,408.18	383,281.67	542,691.85	349,872.50	757,904.18	1,107,861.78		211,401.71	506,459.05	781,590.76	183,035.64	383,255.61	598,129.30	84,410.43	196,300.83
1939			1,021,184.76			465,858.70			993,258.33				964,751.98			133,422.28		
1941 over 1940	65,538.08	146,974.84	212,512.92	33,884.53	115,177.33	49,061.86	45,382.20	266,116.82	311,499.02		71,158.80	154,519.27	228,677.97	47,022.99	102,648.39	118,936.53	22,906.71	78,828.92
1941 over 1939			(16,087.37)			225,895.62			425,107.17				314,412.75		282,648.39			
Terminal expense:										4400								
1941	772,000.22	1,373,000.00	2,145,069.22	165,459.06	409,430.00	574,909.06	201,158.42	521,142.00	722,300.42		372,072.61	839,262.71	1,191,575.32	148,401.87	312,000.00	499,401.87	139,678.23	341,661.89
1940	627,359.52	1,172,867.00	1,800,226.52	122,537.77	307,193.83	429,733.60	130,096.22	373,387.54	524,186.76		285,083.83	627,867.71	933,221.00	158,192.15	329,581.08	508,173.63	102,081.91	230,082.06
1939			1,663,381.64			387,388.13			497,792.70				719,180.62			374,265.21		
1941 over 1940	144,739.70	200,133.00	344,842.70	42,922.19	102,236.17	145,175.46	71,062.20	147,754.46	198,113.66		86,988.78	191,395.01	258,354.32	33,209.72	82,418.92	91,228.24	37,596.32	111,579.83
1941 over 1939			481,717.58			187,521.83			204,567.72				133,094.70		86,139.66			
Sales & adver. ex.:										4100								
1941	48,781.15	91,100.00	139,881.15	21,596.25	55,542.00	77,138.25	24,858.03	61,140.00	88,998.03		71,188.50	133,280.37	209,438.05	40,798.80	83,093.00	125,798.80	20,594.16	47,659.68
1940	45,860.74	81,946.35	127,807.09	20,848.97	48,630.62	69,479.59	17,353.66	45,537.38	62,891.94		67,373.67	130,149.12	205,913.79	34,172.62	81,439.59	119,582.41	24,279.35	43,287.91
1939			119,700.95			68,244.11			51,789.95				119,533.63			77,986.63		
1941 over 1940	2,920.41	9,153.65	12,074.06	747.28	6,911.38	7,658.66	7,504.37	15,602.62	26,106.09		4,814.83	103,131.25	103,524.26	6,626.18	2,653.41	106,216.39	1,314.81	4,371.77
1941 over 1939			20,120.20			8,894.14			37,208.10				80,993.37		179.91	47,812.17		
Ins. & safety ex.:										4300								
1941	97,342.26	175,306.00	272,642.26	25,924.24	66,580.00	92,504.24	72,539.04	164,000.00	236,539.04		77,090.95	167,431.55	245,131.48	17,021.59	101,590.00	148,327.75	32,571.11	82,091.71
1940	89,289.36	156,851.91	246,141.27	23,863.58	49,463.96	73,327.54	62,591.69	130,426.83	192,818.52		61,888.69	139,826.21	204,717.84	30,186.70	101,123.10	139,609.91	26,882.45	56,569.24
1939			282,721.73			78,161.36			185,479.36				232,687.00			105,587.28		
1941 over 1940	8,052.90	18,454.09	26,500.99	2,060.66	17,116.04	19,176.70	10,147.35	33,573.17	43,720.52		15,202.26	27,605.34	40,413.64	6,834.89	20,466.90	9,717.84	5,688.66	25,522.47
1941 over 1939			(10,079.47)			14,342.88			61,059.68				12,450.48		12,971.33			
Admin. & gen. ex.:										4600								
1941	124,656.37	220,500.00	345,156.37	54,445.41	140,637.00	195,082.41	62,433.90	135,625.00	197,058.90		103,088.51	387,897.71	557,586.25	69,082.14	140,500.00	269,082.14	27,792.88	64,608.05
1940	115,274.51	231,428.05	346,762.56	42,810.95	132,193.25	175,004.20	50,674.65	120,747.93	171,422.58		146,497.42	334,857.39	481,382.81	85,143.35	190,169.61	275,312.96	28,099.63	48,654.11
1939			295,607.26			141,766.95			158,936.55				388,663.99			237,927.19		
1941 over 1940	9,381.86	(10,928.05)	(1,546.19)	11,634.46	8,443.75	20,078.21	11,759.25	14,877.07	25,636.32		29,100.09	53,040.32	76,203.44	16,918.79	50,330.39	93,769.18	1,693.25	16,013.91
1941 over 1939			49,549.11			53,315.46			38,722.35				169,122.26		169,169.61			
Depreciation expense:										5000								
1941	55,189.32	138,600.00	193,789.32	22,405.48	106,813.00	129,218.48	49,105.36	111,000.00	160,105.36		82,846.08	174,390.84	257,200.92	55,354.13	70,000.00	105,354.13	24,762.88	54,449.98
1940	78,773.93	118,509.48	197,283.41	35,647.16	78,741.41													

EXHIBIT B-6

**ASSOCIATED TRANSPORT, INC.**

ties indicated in the I. C. C. application for the calendar years 1939, 1940 and four months ended April 30, 1941, per books and estimated for the eight months, May 1, to December 31, 1941

M. Morse Transportation Lines, Inc.			Acct. No.	Horton Motor Lines, Inc.			Barnwell Brothers, Inc.			Transportation, Inc.			Southeastern Motor Lines, Inc.			Arrow Carrier Corporation			Grand total			
4 months 4/25	8 months 12/27	12 months 12/27		4 months to 1/30	8 months to 12/31	12 months to 12/31	4 months to 1/30	8 months to 12/31	12 months to 12/31	4 months to 1/30	8 months to 12/31	12 months to 12/31	4 months to 1/30	8 months to 12/31	12 months to 12/31	4 months to 1/30	8 months to 12/31	12 months to 12/31	4 months to 1/30	8 months to 12/31	12 months to 12/31	
1,040,080.41	\$2,672,524.00	\$3,712,664.41	3000	\$1,796,681.52	\$4,008,379.83	\$5,775,076.35	\$832,836.20	\$1,670,000.00	\$2,582,836.20	\$501,535.93	\$1,215,285.23	\$1,716,820.95	\$181,153.07	\$362,306.14	\$543,459.21	\$566,043.63	\$1,462,933.03	\$1,758,976.60	\$7,656,985.81	\$16,618,646.25	\$24,275,635.04	
836,431.66	1,978,528.01	2,814,879.67		1,300,151.35	2,949,941.31	4,270,060.00	641,454.17	1,425,216.64	2,036,670.71	370,045.47	837,946.31	1,207,691.78	1,083,786.80	133,441.02	267,242.04	406,774.63	475,107.87	992,893.26	1,468,001.14	5,867,544.14	12,837,720.27	
203,748.75	693,995.99	897,744.74		466,544.14	1,059,438.52	1,524,982.65	101,382.73	324,783.26	456,765.49	131,490.16	377,638.92	599,129.08	47,712.05	64,973.13	112,685.18	90,935.76	160,039.77	250,978.53	1,789,444.67	3,780,925.96	5,570,370.63	
		1,177,287.98			1,949,412.95			703,746.69				633,084.06			174,954.77	208,499.18		308,499.18		6,879,086.33		
126,500.49	298,863.00	443,363.49	4100	195,549.56	444,303.76	629,833.32	73,673.35	160,000.00	283,673.35	67,582.54	135,417.95	203,009.49	24,857.24	49,714.48	74,571.72	59,178.22	125,787.33	184,965.55	813,556.40	1,716,362.52	2,529,918.92	
104,850.58	246,613.10	351,463.68		159,420.31	377,655.44	547,775.75	65,811.76	137,575.70	203,387.46	50,819.87	109,185.00	160,004.87	15,077.67	27,717.91	42,796.58	51,779.52	100,059.79	161,839.31	679,931.25	1,428,255.77	2,108,187.02	
		319,929.64				438,885.31			215,609.02			140,405.53			53,088.99			171,097.77		1,976,969.42		
31,540.91	50,249.90	81,899.81		25,429.25	36,648.32	82,077.57	7,861.59	22,424.30	30,285.89	16,762.97	26,232.15	42,995.62	9,779.57	21,996.57	31,776.14	7,398.70	15,727.54	23,126.24	133,625.15	288,106.75	421,731.90	
		115,443.47				170,968.01			18,054.33			62,594.96			21,182.73			13,867.78		582,919.50		
395,254.70	1,024,411.00	1,419,365.70	4200	310,630.21	691,978.52	1,008,578.74	242,943.63	485,000.00	717,965.63	197,345.14	275,426.75	382,771.89	45,681.23	91,362.46	137,043.65	74,129.10	143,565.94	217,635.04	1,719,966.11	3,859,345.67	5,579,311.78	
349,872.50	737,994.18	1,107,866.28		215,141.71	590,459.05	780,900.74	185,035.64	383,288.50	568,825.30	84,379.44	186,509.83	270,880.27	37,785.38	88,909.18	126,691.56	68,904.12	133,394.63	195,116.10	1,420,877.28	2,972,361.36	4,393,238.64	
		933,258.53				694,171.98			435,422.28			24,099.15			120,875.51					4,158,010.40		
45,882.20	266,116.82	511,499.02		71,168.50	153,519.47	226,677.97	47,024.99	107,711.34	148,741.33	22,974.70	88,916.92	111,891.62	7,895.85	2,456.28	10,352.13	5,224.98	10,111.31	15,336.20	269,088.83	886,984.31	1,156,073.14	
		426,107.17				314,442.73			283,583.45			148,672.74			16,168.18			22,518.94		1,421,301.38		
201,158.45	521,442.00	722,300.42	4300	372,372.61	819,202.71	1,191,575.92	148,404.87	312,000.00	499,404.87	131,678.23	341,661.89	473,340.12	22,677.74	45,343.48	68,015.22	184,139.67	388,864.71	373,004.38	1,997,984.72	4,210,664.79	6,208,649.51	
150,606.22	373,587.54	524,193.76		285,383.83	627,837.77	913,221.60	135,392.45	229,684.08	368,173.33	102,681.91	230,082.06	332,763.97	16,590.65	39,244.32	55,825.87	193,482.58	327,472.22	490,954.80	1,697,134.81	3,307,956.82	4,995,091.66	
		427,792.70				738,180.62			374,265.21			209,292.01			36,622.48			143,542.41		4,342,675.20		
30,536.20	147,554.46	198,106.66		80,988.78	191,364.94	278,353.72	9,592.42	82,318.92	92,231.34	28,999.32	111,579.85	110,576.15	6,081.19	6,110.16	12,191.33	20,657.09	61,392.49	82,049.58	390,849.89	902,707.97	1,293,557.86	
		294,597.72			433,694.70			86,139.66			80,138.11			6,110.16	31,391.74			127,461.97		1,865,974.31		
24,858.05	64,140.00	88,998.05	4400	75,188.59	155,280.37	230,468.95	40,788.80	85,980.00	125,798.80	20,594.16	47,659.68	68,253.84	6,240.95	12,481.90	18,722.85	13,969.38	35,476.99	39,836.37	251,417.33	537,680.94	789,098.27	
17,353.66	45,537.38	62,891.04		67,379.67	136,130.12	204,513.75	41,532.62	84,429.29	119,582.41	24,223.35	43,287.91	67,511.26	74,139.56	5,807.07	14,376.14	20,183.21	13,871.00	27,491.42	41,362.42	229,891.48	485,239.33	715,130.81
		51,793.97				149,333.63			57,968.63			74,139.56			13,868.46			46,043.81		601,383.10		
7,504.39	18,602.62	26,107.01		7,814.92	16,110.25	23,953.53	6,243.78	170.61	5,416.39	3,629.19	7,371.77	742.58	433.85	1,894.24	1,460.36	511.62	1,014.13	1,526.05	21,525.85	52,441.61	73,967.46	
		37,204.10				80,933.53			17,800.17			5,885.72			4,854.35			(6,207.44)		187,715.12		
72,539.04	164,000.00	236,539.04	4500	77,699.95	167,431.53	245,631.48	47,021.59	104,500.00	148,821.59	32,574.14	82,991.71	115,565.85	6,742.55	13,485.10	20,227.65	23,999.31	46,559.20	70,558.51	383,843.08	817,847.54	1,201,690.62	
62,391.60	130,426.83	192,818.52		64,888.00	139,826.24	204,717.84	36,783.70	64,123.10	109,169.60	26,882.35	56,569.34	81,551.69	5,881.03	13,375.42	19,256.45	24,475.65	45,445.39	69,921.04	334,458.96	656,085.19	960,544.15	
		185,479.36				232,681.69			165,587.20			71,784.93			18,357.08			66,170.43		1,040,943.16		
10,147.35	33,573.17	43,720.52		12,811.35	27,602.29	40,413.64	19,234.89	37,376.90	47,611.79	5,691.79	26,422.37	32,114.16	801.52	109.58	971.20	(476.34)	1,113.81	637.47	49,384.12	161,762.35	211,146.47	
		51,059.68			12,459.48			47,971.34			43,789.92			1,870.57			4,388.08		100,747.17			
62,033.90	135,625.00	197,658.90	4600	169,688.51	387,897.74	575,586.25	89,082.14	140,000.00	209,082.14	27,792.88	64,608.05	92,460.93	21,725.64	43,451.28	65,176.92	56,301.01	111,764.42	168,065.43	585,725.86	1,244,543.49	1,830,299.45	
50,674.65	120,747.93	171,422.58		146,497.42	334,885.39	481,382.81	85,143.35	190,239.61	275,312.96	26,099.63	48,654.14	74,755.77	12,937.44	47,313.59	69,251.33	55,095.91	109,369.23	164,465.14	534,333.86	1,214,761.49	1,749,295.43	
		188,936.55				388,463.99			237,927.19			84,181.89			43,295.47			196,320.98		1,546,550.28		
11,359.25	14,877.07	26,236.32		24,191.69	53,612.33	76,263.44	(6,061.21)	(50,169.01)	(66,230.82)	1,693.25	16,013.91	17,707.16	8,788.20	(3,862.61)	4,925.59	1,265.10	2,195.19	3,600.29	51,192.00	29,782.00	80,974.00	
		38,722.35			169,122.26			(28,845.05)			8,279.04			21,881.45			(28,305.55)		283,719.07			
49,105.36	111,000.00	160,405.36	5000	82,846.08	154,366.84	237,260.92	35,354.13	70,000.00	105,354.13	24,762.88	54,449.98	79,212.86	5,970.52	11,941.64	17,911.64	31,021.55	62,724.10	94,745.65	396,649.32	710,888.96	1,017,538.28	
34,960.20	83,428.52	118,388.72		89,707.07	167,147.64	250,854.71	20,275.14	85,342.46	114,617.60	19,616.83	36,742.65	56,359.48	4,483.26	10,315.52	14,798.78	34,973.61	67,086.25	102,659.86	327,437.20	647,313.93	974,751.13	
		112,761.17				235,067.87			86,861.13			46,620.62			9,134.33			99,973.76		889,908.09		
114,145.16	27,571.48	41,719.61		(6,866.99)	(12,786.80)	(19,653.79)	6,078.99	(13,342.46)	(9,263.47)	5,146.05	17,707.33	22,853.38	1,487.26	1,625.52	3,112.78	(3,952.06)	(3,362.15)	7,314.21	(29,787.88)	66,575.03	42,787.15	
		47,343.89			2,123.95			18,493.60			18,493.60			8,777.23			(5,228.11)		127,630.19			
			5100				938.32	1,800.00	2,738.32	211.28	422.56	633.84	120.76	241.52	362.28			1,270.36	2,464.08	3,734.44		
								940.04	2,061.81	3,001.85	142.74	409.21	551.95	120.76	241.51	362.27			1,203.54	2,712.53	3,916.07	
										2,953.44			2,394.68			284.02				2,712.53	5,584.14	
							(1.72)	(261.81)	(293.53)	68.54	13.35	81.89			.01			66.82	(218.45)	(151.63)		
								(197.12)				(1,730.84)			78.20					(1,749.70)		
74,828.45	166,600.00	240,828.45	5200	151,300.57	372,146.80	523,447.46	79,981.98	168,000.00	247,981.98	65,181.82	148,557.17	213,739.09	18,212.39	36,424.78	54,637.17	41,460.72	109,056.96	150,557.98	402,889.57	1,333,012.80	1,935,902.37	
58,633.96	136,389.49	195,023.45		111,211.23	273,536.97	384,768.20	61,425.86	137,355.54	198,821.40	49,167.67	115,492.27	164,659.94	12,664.89	30,435.35	43,100.24	34,872.51	74,940.67	109,813.68	470,675.44	1,050,525.83	1,521,201.27	
		162,552.60				321,337.34			161,218.55			144,833.16			31,897.74			100,641.85		1,324,290.69		
16,191.49	29,610.51	45,805.00		40,089.34	98,589.92	138,679.26	18,556.12	30,604.46	44,160.58	16,014.15	33,064.90	49,079.05	5,547.50	5,989.43	11,536.93	6,588.21	34,156.29	40,744.50	132,214.13	282,486.97	414,701.47	

Comparative statement of income, profit and loss of the carrier companies indicated in the I. C. C. application for the calendar years 1939, 1940 and four months ended April 30, 1941, per books and estimated for the eight months, May 1, to December 31, 1941—Continued

209	Southern New England Terminals, Inc.			Brown Equipment & Mfg. Co., Inc.			Conger Realty Co.			Barnwell Warehouse & Brokerage Co.			Totals		
	4 months to 4/30	8 months to 12/31	12 months to 12/31	4 months to 4/30	8 months to 12/31	12 months to 12/31	4 months to 4/30	8 months to 12/31	12 months to 12/31	4 months to 4/30	8 months to 12/31	12 months to 12/31	4 months to 4/30	8 months to 12/31	12 months to 12/31
Sales:															
1941				\$274,310.85	\$639,707.95	\$914,018.80							\$274,310.85	\$639,707.95	\$914,018.80
1940				287,484.94	569,032.11	856,517.03							287,484.94	569,032.11	856,517.03
1939						469,402.42									469,402.42
1941 over 1940				(13,174.09)	70,675.84	57,501.75							(13,174.09)	70,675.84	57,501.75
1941 over 1939						444,616.38									444,616.38
Rental income:															
1941	\$9,133.32	\$21,546.64	\$30,679.96				\$42,200.00	\$90,400.00	\$132,600.00	\$4,431.67	\$9,100.00	\$13,531.67	\$5,764.99	\$21,046.64	\$30,679.96
1940	3,609.99	13,499.97	17,199.96				34,600.00	83,603.22	118,203.22	1,160.00	9,000.00	10,253.00	30,450.99	106,198.19	145,658.18
1939			6,466.66						54,120.00						60,586.66
1941 over 1940	5,433.33	8,046.67	13,480.00				7,600.00	6,796.78	14,396.78	3,271.67	5.00	3,276.67	16,303.00	14,848.45	31,153.45
1941 over 1939			24,213.30						78,480.00			13,531.67		116,224.97	
Freight revenue:															
1941										35,428.97	(407.25)	35,321.72	35,428.97	(107.25)	35,321.72
1940												120,554.74			120,554.74
1939															
1941 over 1940										(35,428.97)	107.25	35,321.72	(35,428.97)	107.25	35,321.72
1941 over 1939												(35,428.97)			(35,428.97)
Total income:															
1941	9,133.32	21,546.64	30,679.96	274,310.85	639,707.95	914,018.80	42,200.00	90,400.00	132,600.00	4,431.67	9,100.00	13,531.67	330,675.84	760,754.59	1,060,830.43
1940	3,609.99	13,499.97	17,199.96	287,484.94	569,032.11	856,517.03	34,600.00	83,603.22	118,203.22	36,588.97	8,978.75	45,576.72	362,373.90	767,123.05	1,037,496.95
1939			6,466.66			469,402.42			54,120.00			120,554.74			650,543.82
1941 over 1940	5,433.33	8,046.67	13,480.00	(13,174.09)	70,675.84	57,501.75	7,600.00	6,796.78	14,396.78	(32,157.30)	112.25	(32,145.95)	(32,298.06)	85,631.54	53,333.48
1941 over 1939			24,213.30			444,616.38			78,480.00			(107,023.07)			440,286.61
EXPENSES															
Cost of goods sold:															
1941				211,104.67	480,550.00	691,654.67							211,104.67	480,550.00	691,654.67
1940				211,789.40	422,672.48	634,461.88							211,789.40	422,672.48	634,461.88
1939						350,281.75									350,281.75
1941 over 1940				(684.73)	57,877.52	57,192.79							(684.73)	57,877.52	57,192.79
1941 over 1939						341,372.92									341,372.92
210. Transportation, maintenance & terminals expense:															
1941				2,410.26	10,541.11	12,951.37				3.20	135.00	138.20	2,413.46	10,676.11	13,089.57
1940				3,596.04	5,721.58	10,517.92				19,590.04	(1.13)	19,888.91	23,486.08	6,720.45	30,206.51
1939						4,819.01						73,518.27			78,337.28
1941 over 1940				(1,185.78)	3,819.53	2,433.45				(19,586.84)	136.13	(19,750.71)	(21,072.62)	3,955.66	(17,116.99)
1941 over 1939						8,132.36						(73,380.07)			(65,247.71)
Insurance & safety expense:															
1941		1,013.56	1,013.56	792.85	2,127.16	2,920.01	632.25	965.44	1,597.69			11.92	1,437.02	4,106.16	5,543.18
1940		248.26	248.26	628.39	1,589.51	2,417.90	436.75	1,250.91	1,687.66			74.07	1,739.15	3,088.58	4,827.83
1939			215.39			528.05			344.02			2,796.05			3,093.51
1941 over 1940															
1941 over 1939		765.30	765.30	164.46	537.65	702.11	195.50	285.47	189.97			(662.09)	(302.13)	1,017.48	715.35
Administration & general expense:															
1941	2.00		2.00	12,920.65	32,287.64	45,208.20	251.30	690.00	831.50	1,066.00	3,358.34	5,025.00	11,820.61	36,245.98	51,066.50
1940	2.00	3,808.32	3,810.32	13,805.11	26,198.09	40,063.20	2,193.31	263.91	2,487.22	1,820.08	3,372.92	5,055.00	17,682.50	33,673.24	51,355.74
1939			3,306.75			19,111.93			1,448.75			16,752.00			40,712.23
1941 over 1940				(884.46)	6,089.55	5,205.09	(1,942.01)	300.09	(1,655.92)	(15.42)	(14.58)	(30.00)	(2,861.89)	2,572.74	(260.15)
1941 over 1939		(3,806.32)	(3,808.32)	(884.46)		26,096.27			(617.25)			(11,727.00)			10,354.36
Depreciation & expense:															
1941		6,622.64	6,622.64	(443.24)	1,179.43	739.15	2,190.93	4,557.24	5,674.17	740.65	800.00	1,540.65	2,488.34	13,159.31	15,647.65
1940		3,543.95	3,543.95	805.70	1,123.27	1,925.97	2,917.00	6,123.93	9,040.94	300.66	584.48	885.14	6,023.36	11,375.64	15,399.00
1939			1,531.50			451.90			4,803.45			594.12			7,351.06
1941 over 1940															
1941 over 1939		3,078.69	3,078.69	(1,248.94)	56.16	(1,192.78)	(726.07)	(1,566.70)	(2,232.77)	(439.99)	215.52	655.51	(1,535.02)	1,783.67	218.65
Operating taxes & licenses:															
1941	49.33	3,663.50	3,712.83	1,981.61	8,019.15	10,033.76	2,444.78	5,400.00	7,801.78	691.02	1,290.00	1,861.02	5,036.74	18,342.65	23,379.39
1940	46.00	2,962.99	2,108.99	1,337.54	5,603.09	6,942.63	215.89	8,737.89	8,953.75	1,487.36	1,452.35	2,940.11	8,086.99	17,858.49	20,945.48
1939			1,020.74			3,065.15			1,671.96			4,824.88			10,592.73

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## Consolidated statement of income, profit and loss of the carrier companies included in the I. C. C. application for the fiscal year ended April 30, 1941, per books and as adjusted

Acct. No.	Consolidated Motor Lines, Inc.		McCarthy Freight System, Inc.		M. Moran Trans. Inc.		Lines Horton Motor Lines, Inc. 4/30/41		Barnwell Brothers, Inc. 4/30/41		Transportation, Inc. 4/30/41		Southeastern Motor Lines, Inc., 4/30/41		Arrow Carrier Corp., 4/30/41		Total for year ended 4/30/41 or as indicated	
	5/17/41 Per books	4/30/41 Adjusted	4/19/41 Per books	4/30/41 Adjusted	4/26/41 Per books	4/30/40 Adjusted	Per books	Adjusted	Per books	Adjusted	Per books	Adjusted	Per books	Adjusted	Per books	Adjusted	Per books	Adjusted
3000 Operating Revenues	\$5,062,633.66	\$5,062,633.66	\$2,062,171.42	\$2,095,705.85	\$3,018,608.42	\$3,034,908.10	\$4,716,637.83	\$4,718,697.66	\$2,256,048.86	\$2,256,048.89	\$1,339,181.94	\$1,338,659.04	\$478,486.08	\$478,486.08	\$1,558,936.89	\$1,558,936.89	\$20,492,705.13	\$ 0,744,076.17
Expenses:																		
4100 Equip. maint. & garage ex	477,081.34	487,886.59	198,582.49	204,026.88	383,113.59	361,593.62	573,205.00	587,221.38	233,744.52	233,744.52	176,767.54	171,382.96	52,575.15	50,128.01	169,238.01	161,240.86	2,264,307.64	2,257,224.82
4200 Transportation expense	4,858,122.55	4,858,122.55	170,576.38	585,671.40	1,153,248.88	1,110,199.95	853,059.26	852,834.79	614,959.72	614,959.72	293,854.97	294,107.41	134,587.41	134,587.41	207,523.73	207,196.13	4,601,932.10	4,657,679.27
4300 Terminal expense	1,944,870.02	1,944,870.02	172,655.79	479,915.67	574,745.96	627,205.12	1,000,210.38	999,207.10	377,486.39	377,486.39	361,786.29	361,953.43	61,906.06	61,105.05	511,611.89	511,611.89	5,305,245.78	5,364,154.68
4400 Sales tariff & adver. ex	130,823.70	130,823.70	70,226.87	70,371.94	70,395.43	71,208.73	214,328.71	215,106.95	123,798.58	123,798.58	63,882.07	63,949.57	20,617.09	20,617.09	40,850.80	40,850.80	734,893.25	737,496.46
4500 Insurance & safety expense	254,194.17	257,020.05	75,388.20	77,425.03	202,965.87	193,605.76	217,529.19	212,016.28	122,377.58	122,377.58	89,143.48	90,524.87	20,117.97	20,117.97	69,444.70	68,312.07	1,051,161.16	1,041,399.61
4600 Administrative & general ex	356,064.42	343,341.13	180,638.66	177,970.67	182,781.83	179,125.80	504,573.90	497,169.87	355,186.77	355,186.77	76,447.02	82,702.82	69,039.53	69,611.53	165,670.24	171,342.42	1,796,422.37	1,776,451.01
5000 Depreciation expense	173,668.80	183,761.51	101,146.89	108,323.18	132,533.88	123,885.88	249,987.72	263,105.33	95,928.91	95,928.91	61,505.53	64,857.34	16,286.04	15,912.29	98,107.80	100,198.58	929,165.57	935,972.52
5100 Amortization chargeable to oper									2,939.55	2,939.55	620.49		362.27	178.20			3,922.31	3,117.75
5200 Operating taxes & licenses	322,508.35	329,638.72	131,730.83	133,149.05	211,217.94	214,882.10	424,857.54	420,180.22	222,068.82	222,046.17	180,674.09	180,675.09	48,647.74	48,407.74	116,401.39	113,024.09	1,658,106.70	1,653,084.16
5300 Operating rents—Net	121,734.28	121,734.28	43,657.73	46,290.44	33,340.48	35,397.15	157,218.79	156,945.29	21,840.56	21,840.56	33,746.18	33,777.61	5,922.75	5,922.75	26,790.04	26,790.04	444,250.81	448,707.12
Total expenses	4,639,117.63	4,648,198.55	1,856,903.84	1,883,143.34	2,944,343.86	2,917,103.61	4,194,970.49	4,204,587.12	2,070,301.40	2,070,278.75	1,338,401.66	1,343,931.10	430,061.01	427,478.05	1,405,638.90	1,400,566.88	18,879,438.49	18,893,287.40
Net operating revenue	423,516.03	414,435.11	205,567.58	212,562.51	74,264.56	117,804.49	521,667.34	514,110.54	185,747.49	185,770.14	780.28	(5,272.06)	48,425.07	51,008.03	153,298.29	158,370.01	1,613,266.64	1,648,788.77
Other income	23,768.89	23,792.24	2,706.77	2,766.77			1,557.72	1,513.19	382.43	127.43	(493.50)	(493.50)	8.86	8.86	(4.39)	(4.39)	27,926.78	27,710.60
Gross income	447,284.92	438,227.35	208,274.35	215,329.28	74,264.56	117,804.49	523,225.06	515,623.73	186,129.92	185,897.57	286.78	(5,765.56)	48,433.93	51,016.89	153,293.90	158,365.62	1,641,193.42	1,676,499.37
Income deductions:																		
7000 Interest on long term oblig	11,491.92	11,491.92	9,709.14	10,371.11			1,965.07		8,117.47	8,117.47	3,395.54	3,096.22	317.15	317.15	727.50	727.50	33,758.72	36,074.37
7100 Other interest deductions	1,036.20	1,036.20	1,497.39	835.42	675.62	(52.19)	1,965.07	1,867.95		4,523.90	3,797.29	4,487.29	479.02	479.02	2,858.42	2,858.42	12,309.01	16,036.03
7500 Other deductions	1,492.77	1,492.77	(1.69)	508.40	3,631.00	3,728.50	16,134.32	11,349.17	4,523.50	(255.00)	5,883.65	803.83	213.75	213.75	1,800.00		33,677.79	17,931.82
Total income deductions	14,020.89	14,020.89	11,204.93	11,804.93	4,306.62	3,676.71	18,099.39	13,217.12	12,641.37	12,386.37	13,076.48	10,337.34	1,009.92	1,009.92	5,385.92	3,585.92	79,745.52	70,039.20
Net profit before income taxes	433,264.03	424,206.46	197,069.42	203,524.35	69,957.94	114,127.78	505,125.67	502,406.61	173,488.55	173,511.20	(12,789.70)	(16,102.90)	47,424.01	50,006.97	147,907.98	154,779.70	1,561,447.90	1,606,460.17
Adjustment of profit to year ended 4/30/41		(33,743.54)																(33,743.54)
8000 Provision for income taxes	126,638.08	153,193.34	44,537.21	74,156.58	17,482.38	29,850.13	170,287.87	128,214.12	48,360.67	48,361.67			14,676.15	21,903.66	37,147.12	429,209.87	485,599.21	485,599.21
Net profit after income taxes	306,625.95	271,013.12	152,532.21	129,367.77	52,475.56	84,277.60	334,837.80	374,192.44	125,127.88	125,149.53	(12,789.70)	(16,102.90)	47,424.01	35,330.82	126,004.32	117,632.58	1,132,238.03	1,087,117.42
Nonrecurring expenses incl. above		57,347.16		16,832.50				48,235.00		8,425.22			15,475.00		40,794.53		187,104.51	
Less: Income tax applicable thereto		31,196.84		8,517.25				12,308.58		3,880.39			6,654.25		9,790.68		72,348.99	
Net nonrecurring expenses		26,150.32		8,315.25				35,926.42		4,539.83			8,820.75		31,003.85		114,755.52	
Adjusted net profit excluding nonrecurring expenses		263,419.90		137,683.02			84,277.60	410,117.86		129,689.46		(16,102.90)	44,151.57		148,636.43		1,291,872.94	

NOTE.—The adjusted figures are subject to further audit and revision.

1 McCarthy Freight System, Inc. figures have been adjusted from 4/19/41 to 4/30/41.

212 Statement of Income, Profit & Loss of the Non-Carrier Companies Included in the I. C. C. Application for the Fiscal Year Ended April 30, 1941, Per Books and As Adjusted

	Southern New England Terminals, Inc.		Brown Equipment & Mfg. Co., Inc.		Conger Realty Co.		Barnwell Whse. & Brokerage Co.		Totals	
	Per Books	Adjusted	Per books	Adjusted	Per books	Adjusted	Per books	Adjusted	Per books	Adjusted
<b>Income:</b>										
Sales										
Rental income	\$22,633.29	\$22,633.29	\$43,342.96	\$43,567.24	\$125,803.22	\$125,803.22	\$13,419.42	\$13,526.67	\$843,342.96	\$843,567.24
Total revenue	22,633.29	22,633.29	843,342.96	843,567.24	125,803.22	125,803.22	13,419.42	13,526.67	1,005,198.89	1,005,530.42
<b>Operating Cost:</b>										
Cost of Goods Sold			633,777.15	\$632,709.96					633,777.15	632,709.96
Transportation			9,131.84	9,029.83			2.07	115.16	9,133.91	9,141.49
Expense	248.26	503.38	2,392.36	2,410.31	1,179.18	1,179.18	11.92	41.92	4,325.70	4,104.79
Insurance and Safety Expense	3,810.32	3,810.32	39,118.74	39,165.92	1,883.16	1,883.16	5,039.56	5,025.05	48,493.85	48,541.90
Administration & General Expense	3,543.85	3,543.85	680.03	1,255.05	8,314.87	6,293.55	1,325.13	1,550.07	13,983.96	13,985.91
Depreciation Expense	2,112.32	2,112.32	7,596.70	7,540.28	11,142.64	9,033.71	2,053.57	1,857.02	22,805.23	20,552.07
Operating Taxes & Licenses	4,983.42	4,978.97	1,318.28	1,313.28	7,843.81	7,835.81	1,726.02	1,726.02	14,870.53	14,869.08
Interest Expense										
Total Operating Costs	14,700.27	15,751.33	693,993.10	693,705.77	29,706.69	24,852.91	9,158.29	9,285.19	747,599.35	743,595.20
Net Profit before Income Taxes	7,933.02	6,881.96	149,347.86	149,861.47	96,096.53	100,950.31	4,261.13	4,241.48	257,638.54	261,935.22
Provision for Income Taxes	492.86	1,096.02	44,899.65	44,208.25	29,230.64	29,230.64	1,093.03	840.56	75,706.18	75,381.47
Net Profit after Income Taxes	\$7,440.16	\$5,785.94	\$104,448.21	\$105,653.22	\$66,865.89	\$71,719.67	\$3,178.10	\$3,394.92	\$181,932.36	\$186,553.75
Nonrecurring Expenses included above				2,000.00						5,000.00
Less Income Tax Applicable thereto		3,000.00		495.00						1,005.00
Net Non-recurring Expenses										
Adjusted Normal Annual Income		2,505.00		1,400.00						3,905.00
		\$6,290.94		\$107,053.22		\$71,719.67		\$3,394.92		\$190,458.75

NOTE.—The book figures are stated as reflected in the books of the respective companies. The adjusted figures are subject to further audit and revision.

## McLEAN TRUCKING CO., INC., ET AL.

	Carrier companies		Noncarrier companies		All companies	
	Year ended April 30, 1941		Year ended April 30, 1941		Year ended April 30, 1941	
	Per books	Adjusted	Per books	Adjusted	Per books	Adjusted
Carrier operating revenues	\$20,492,705.13	\$20,544,076.17			\$20,492,705.13	\$20,544,076.17
Noncarrier operating revenues			\$1,005,194.89	\$1,005,530.42	1,005,194.89	1,005,530.42
Total revenues	20,492,705.13	20,544,076.17	1,005,194.89	1,005,530.42	21,497,900.02	21,549,606.59
Expenses:						
Cost of goods sold	2,354,307.64	2,257,224.82	653,777.15	632,700.96	613,777.15	622,700.96
Equipment maintenance & garage expense	4,691,932.90	4,657,679.27	9,133.91	9,141.49	2,273,441.55	2,295,365.31
Transportation expense	5,305,245.78	5,394,154.68			4,691,932.90	4,657,679.27
Trial expense	734,863.25	737,496.46			5,305,245.78	5,394,154.68
Sales, tariff & advertising expense	1,051,161.16	1,041,390.61	4,525.70	4,104.79	734,863.25	737,496.46
Insurance and safety expense	1,796,422.37	1,776,451.01	48,493.85	48,541.90	1,055,084.86	1,045,594.40
Administrative & general expense	1,926,195.57	1,965,972.52	13,853.98	13,985.91	1,844,916.22	1,834,922.91
Depreciation expense	3,922.31	3,117.75	22,865.23	20,552.07	943,059.55	960,658.43
Amortization chargeable to operations	1,655,106.70	1,653,084.16			3,922.31	3,117.75
Operating taxes and licenses	444,250.81	448,707.12			1,081,001.93	1,073,636.23
Operating ratio - net					444,250.81	448,707.12
Total expenses	18,879,438.49	18,895,287.40	732,669.82	728,736.12	19,612,128.31	19,624,025.52
Net operating revenue	1,613,266.64	1,648,788.77	272,529.07	276,794.30	1,885,775.71	1,925,581.07
Other income	27,926.78	27,710.90			27,926.78	27,710.90
Gross income	1,641,193.42	1,676,499.67	272,529.07	276,794.30	1,913,702.49	1,953,291.97

## THE UNITED STATES OF AMERICA, ET AL.

Income deductions:						
Interest on long term obligations	33,758.72	36,071.37	14,870.53	14,859.08	48,630.25	50,930.45
Other interest deductions	12,309.01	16,086.01			12,309.01	16,086.01
Other deductions	33,677.79	17,601.82			32,677.79	17,931.83
Total income deductions	79,745.52	70,039.20	14,870.53	14,859.08	94,616.05	84,968.29
Net profit before income taxes	1,561,447.90	1,606,460.17	257,658.54	261,935.22	1,819,086.44	1,868,365.39
Adjustment of profit to year ended April 30, 1941		(33,743.54)				(33,743.54)
Provision for income taxes	439,209.87	465,599.21	75,708.18	75,381.47	504,916.05	560,860.06
Net profit after income taxes	1,122,238.03	1,087,117.42	181,950.36	186,553.75	1,314,170.39	1,273,761.77
Nonrecurring expenses included above		187,104.51				192,104.51
Less income taxes applicable thereto		72,348.99				73,443.99
Net nonrecurring expenses		114,755.52				118,660.52
Adjusted profit excluding nonrecurring expenses		1,201,872.94				1,362,531.99

NOTE. The adjusted figures are subject to further audit and revision.

214 Summary of Comparative Statement of Income, Profit & Loss of the Carrier and Noncarrier Companies Included in the I. C. C. Application for the Calendar Years 1939, 1940, and Four Months Ended April 30, 1941, per Books, and Estimated for the Eight Months May 1 to December 31, 1941

	Total all companies		
	Four months to 4/30	Eight months to 12/31	Twelve months to 12/31
<b>Freight Revenue:</b>			
1941	7,656,988.81	16,618,646.23	24,275,635.04
1940	5,902,973.11	12,837,613.02	18,740,586.13
1939			17,517,103.46
1941 over 1940	1,754,015.70	3,781,033.21	5,535,048.91
1941 over 1939			6,758,531.58
<b>Rental Income:</b>			
1941	55,764.99	121,046.64	176,811.63
1940	39,459.99	106,198.19	145,658.18
1939			60,580.66
1941 over 1940	16,305.00	14,848.45	31,153.45
1941 over 1939			116,224.97
<b>Sales:</b>			
1941	274,310.85	639,707.95	914,018.80
1940	287,484.91	569,032.11	856,517.05
1939			469,402.42
1941 over 1940	(13,174.06)	70,675.84	57,501.75
1941 over 1939			444,616.38
<b>Total Income:</b>			
1941	7,987,064.65	17,379,400.82	25,396,465.47
1940	6,229,918.04	13,512,843.32	19,742,761.36
1939			18,047,092.54
1941 over 1940	* 1,757,146.61	3,866,557.50	5,653,704.11
1941 over 1939			7,319,372.93
<b>Cost of Goods Sold:</b>			
1941	211,104.07	480,550.00	691,654.67
1940	211,729.40	422,672.48	634,461.88
1939			350,281.75
1941 over 1940	(684.73)	57,877.52	57,192.79
1941 over 1939			341,372.92
<b>Equipment Maintenance and Garage Expense</b>			
1941	813,556.40	1,716,362.52	2,529,918.92
1940	679,931.25	1,428,255.77	2,108,187.02
1939			1,976,999.42
1941 over 1940	133,625.15	288,106.75	421,731.90
1941 over 1939			552,919.50
<b>Transportation Expense:</b>			
1941	1,722,379.57	3,870,021.78	5,592,401.57
1940	1,444,363.36	2,979,081.81	4,428,445.17
1939			4,236,347.68
1941 over 1940	278,016.21	890,939.97	1,164,956.40
1941 over 1939			1,356,053.67

## Summary of Comparative Statement of Income, etc.—Continued

		Total all companies		
		Four months to 4/30	Eight months to 12/31	Twelve months to 12/31
<b>215</b>	<b>Terminal Expense:</b>			
1941	.....	1,097,984.72	4,210,664.79	6,208,649.51
1940	.....	1,607,194.83	3,307,956.82	4,915,091.65
1939	.....			4,342,675.20
1941 over 1940	.....	390,849.89	902,707.97	1,293,557.86
1941 over 1939	.....			1,865,974.31
<b>Sales Tariff &amp; Advertising Expense:</b>				
1941	.....	251,417.33	537,680.94	789,098.27
1940	.....	229,891.48	485,239.33	715,130.81
1939	.....			601,383.10
1941 over 1940	.....	21,525.85	52,441.61	73,967.46
1941 over 1939	.....			187,715.17
<b>Insurance &amp; Safety Expense:</b>				
1941	.....	385,280.10	821,953.70	1,207,233.80
1940	.....	336,198.11	659,173.87	995,371.98
1939	.....			1,044,626.66
1941 over 1940	.....	49,081.99	162,779.83	211,861.82
1941 over 1939	.....			162,607.14
<b>Administrative and General Expense:</b>				
1941	.....	690,540.47	1,280,789.47	1,881,335.94
1940	.....	552,216.36	1,248,434.73	1,800,651.09
1939	.....			1,587,262.51
1941 over 1940	.....	48,324.11	32,354.74	80,684.85
1941 over 1939	.....			294,073.43
<b>Depreciation:</b>				
1941	.....	309,137.66	724,048.27	1,033,183.93
1940	.....	331,460.56	658,689.57	980,150.13
1939	.....			897,259.15
1941 over 1940	.....	(22,322.90)	65,358.70	43,033.80
1941 over 1939	.....			135,926.78
<b>Amortization Chargeable to Operations:</b>				
1941	.....	1,270.36	2,464.08	3,734.44
1940	.....	1,203.54	2,712.53	3,916.07
1939	.....			5,584.14
1941 over 1940	.....	66.82	(248.45)	(181.63)
1941 over 1939	.....			(1,849.70)
<b>Operating Taxes &amp; Licenses:</b>				
1941	.....	607,926.31	1,351,355.45	1,959,281.76
1940	.....	473,762.43	1,068,384.32	1,542,116.75
1939	.....			1,334,822.73
1941 over 1940	.....	134,163.88	282,971.13	417,165.01
1941 over 1939	.....			624,459.03
<b>216</b>	<b>Operating Rents Net:</b>			
1941	.....	169,830.36	318,630.36	478,860.72
1940	.....	137,667.40	283,426.45	421,087.85
1939	.....			341,644.67
1941 over 1940	.....	23,162.96	34,603.91	57,772.87
1941 over 1939	.....			137,216.05
<b>Total Expenses:</b>				
1941	.....	7,061,433.95	15,313,921.36	22,375,355.31
1940	.....	6,005,618.72	12,544,021.68	18,549,640.40
1939	.....			16,718,887.01
1941 over 1940	.....	1,055,815.23	2,769,899.68	3,825,714.91
1941 over 1939	.....			5,656,468.30

[illegible]





## Summary of Comparative Statement of Income, etc.—Continued

	Total all companies		
	Four months to 4/30	Eight months to 12/31	Twelve months to 12/31
<b>Net Operating Income—1941</b>	<b>925,630.70</b>	<b>2,065,479.46</b>	<b>2,991,116.16</b>
1940	224,299.32	968,521.64	1,193,129.96
1939			1,328,203.53
1941 over 1940	701,331.38	1,096,957.82	1,797,986.20
1941 over 1939			1,662,904.63
<b>Other Income:</b>			
1941	9,253.59	20,066.61	29,350.20
1940	3,521.34	18,381.74	21,903.08
1939			10,345.27
1941 over 1940	5,732.25	1,714.87	7,447.12
1941 over 1939			19,004.93
<b>Gross Income:</b>			
1941	934,884.29	2,085,546.07	3,020,466.36
1940	227,820.66	987,203.38	1,215,034.04
1939			1,338,550.80
1941 over 1940	707,063.63	1,098,342.69	1,805,432.32
1941 over 1939			1,681,909.56
<b>Interest:</b>			
1941	19,546.57	41,791.19	61,337.76
1940	22,394.28	45,679.14	68,273.42
1939			79,646.85
1941 over 1940	(2,847.71)	(4,087.95)	(6,935.66)
1941 over 1939			(18,312.09)
<b>Other Deductions:</b>			
1941	9,973.02	19,877.60	29,850.62
1940	6,522.85	19,163.87	25,686.72
1939			18,380.17
1941 over 1940	3,450.17	713.73	4,163.90
1941 over 1939			11,470.45
<b>217 Total Income Deductions:</b>			
1941	29,519.59	61,668.79	91,188.38
1940	28,917.13	65,043.01	93,960.14
1939			98,030.02
1941 over 1940	602.46	(3,574.22)	(2,771.76)
1941 over 1939			(6,841.64)
<b>Net Profit before Income Taxes:</b>			
1941	905,364.70	2,023,907.28	2,929,271.98
1940	198,905.53	922,160.37	1,121,053.90
1939			1,240,520.78
1941 over 1940	706,461.17	1,101,746.91	1,808,208.08
1941 over 1939			1,688,751.20
<b>Provision for Income Tax:</b>			
1941	172,367.98	706,400.74	968,658.72
1940	25,402.33	336,956.94	362,359.27
1939			269,799.12
1941 over 1940	146,965.65	459,443.80	606,309.45
1941 over 1939			698,869.60
<b>Net Profit after Income Tax:</b>			
1941	733,006.72	1,227,506.54	1,960,603.26
1940	173,503.20	585,203.43	758,704.63
1939			970,721.66
1941 over 1940	559,503.52	642,303.11	1,201,898.63
1941 over 1939			989,881.60

**Schedule Showing Incorporation Data, Capitalization, Officers & Directors of the Companies Included in I. C. C. Application**

Consolidated Motor Lines, Inc.									McCarthy Freight System Inc.	Southern New England Terminals, Inc.	M. Moran Transportation Lines, Inc.	Horton Motor Lines, Inc.
	Consolidated Motor Lines, Inc. (Conn.)	Consolidated Motor Lines, Inc. (Mass.)	United Harbour Express, Inc.	United Sales & Mfg. Co.								
1. Incorporation:	Conn.	Mass.	Conn.	Conn.	Mass.	Mass.	N. Y.	N. C.				
State	April 1930	Feb. 1935	April 1929	June 1929	Sept. 1915	June 1930	May 1931	July 1930.				
2. Capitalization:												
A. Preferred	None	None	None	None		None	None					
Per Share					\$100.00							
Authorized number of shares					1,000							
Outstanding number of shares					None							
Authorized Amt.					\$100,000.00							
Outstanding Amt.					None							
Subscribed number of shares												
Subscribed Amt.												
B. Common:												
Par per share	\$5.00	\$100.00	No par	Class A \$100 Class B \$100	No par	No par	No par					
Authorized number of shares	200,000	950	5,000	Class A 250 Class B 250	7,500	500	250					
Outstanding number of shares	2,199	23	1,656	Class A 52 Class B 8	7,500	300	250					
Authorized Amount												
Outstanding Amount	\$10,995.00	\$2,300.00	\$16,560.00	\$6,000.00	\$101,000.00	\$20,000.00	\$35,400.00 \$35,400.00					
3. Officers:												
Chairman of Board	Everett J. Arbour	Jos. Arbour	Jos. Arbour	E. J. Arbour	John J. McCarthy	Chas. F. McCarthy	M. M. Moran	H. D. Horton.				
President	Jos. Arbour	John W. Ghent	John W. Ghent	Jos. Arbour	Geo. E. Bertucio	Geo. E. Bertucio	J. P. Atwater	J. D. Kluttz.				
Vice-Pres.	Earl E. Simpson Wendell Simpson Harold C. Davis Alexis P. Scott			Wendell Simpson	James L. Doyle Chas. Bertucio			J. N. Johnson.				
Treasurer		E. J. Arbour	E. J. Arbour	A. P. Scott	Chas. F. McCarthy	John J. McCarthy	M. M. Moran	J. A. Sutton.				
Asst. Treasurer	Alex. P. Scott	A. P. Scott	A. P. Scott	A. P. Scott	Alex. W. Chisholm		M. M. Moran	J. A. Sutton.				
Secretary or Clerk	None	Hector Dery	A. P. Scott	A. P. Scott	Chas. F. McCarthy	None	None	None.				
Asst. Secretary	None	None	None	None	None	None	None	E. S. Mulwee.				
Comptroller	None	None	None	None	None	None	None					
219 4. Directors:												
Number per by-laws	9 only	3 to 7	3 to 5	3 to 8	3	3	3	3				
	Joseph Arbour Everett J. Arbour John W. Ghent Alexis P. Scott Chas. B. Colpitts Ed. LeRoy Hugh M. Joseloff Earl E. Simpson Walter Mack, Jr.	Joseph Arbour E. J. Arbour J. W. Ghent J. P. Scott H. M. Joseloff	Joseph Arbour E. J. Arbour J. W. Ghent A. P. Scott H. M. Joseloff	Joseph Arbour E. J. Arbour H. M. Joseloff	John J. McCarthy Chas. F. McCarthy Geo. E. Bertucio	John J. McCarthy Chas. F. McCarthy Geo. E. Bertucio	John J. McCarthy Chas. F. McCarthy Geo. E. Bertucio	M. Moran M. A. Sullivan	H. D. Horton. Mrs. H. D. Horton. Henry C. Horton. Benj. S. Horton. J. D. Kluttz. J. A. Sutton. C. A. Cochran. J. B. Evans. J. D. Lawson. B. L. Frazier. M. B. Speiz, Jr. J. N. Johnson.			

Brown Equipment & Mfg. Co., Inc.									Conger Realty Co., Inc.	Barnwell Brothers, Inc.	Barnwell Warehouse & Brokerage Co.	Transportation, Inc.	Southeastern Motor Lines, Inc.	Arrow Carrier Corp.		
1. Incorporation:																
State	N. C.	N. C.	N. C.	N. C.	N. C.	Georgia	Virginia	N. J.								
Date	July 1937	August 1938	September 1930	October 1931	August 1939	February 1938	March 1929.									
2. Capitalization:																
A. Preferred	None	None				None	None									
Par per share																
Authorized number of shares																
Outstanding number of shares																
Authorized Amount																
Outstanding Amount																
B. Common:																
Par per share																
Authorized number of shares																
Outstanding number of shares																
Authorized Amount																
Outstanding Amount																
Officers—Chairman of Board:																
President	J. N. Johnson	R. G. Conger	R. W. Barnwell	R. W. Barnwell	A. S. Clay	C. C. Brock	John E. Ackerman.									
Vice President	J. L. Brown	H. G. Ivler	T. L. Walker	J. H. Barnwell	J. G. Coley	J. T. Howard	George Whitehead.									
Treasurer																
Secretary or Clerk	Roy Boyd	O. P. Roberson	James A. Barnwell	James A. Barnwell	W. F. Wemberly	B. L. Huntsman	J. J. Buckley, Jr.									
Asst. Secretary	Roy Boyd		John H. Barnwell	James A. Barnwell	R. W. Barnwell	V. P. Graham										
1. Directors:																
Number per bylaws	6	3	5	5	7 to 21	5	3									
	H. D. Horton J. A. Sutton J. D. Kluttz C. A. Cochran J. N. Johnson J. L. Brown	H. D. Horton O. P. Roberson R. G. Conger	R. W. Barnwell T. C. Walker James A. Barnwell	R. W. Barnwell John H. Barnwell James A. Barnwell	R. W. Barnwell John H. Barnwell James A. Barnwell	R. W. Barnwell W. F. Wemberly J. G. Caley A. S. Clay W. L. Moore, Jr. W. P. Moore E. C. Spinks.	C. C. Brock V. P. Graham L. Gosweiler B. L. Huntsman	J. E. Ackerman. J. J. Buckley, Jr. Geo. Whitehead.								

221 SCHEDULE OF STOCKHOLDERS OF COMPANIES INCLUDED IN  
I. C. C. APPLICATION AS OF APRIL 30, 1941

## Carrier Companies

## CONSOLIDATED MOTOR LINES, INC.

Stockholders	Preferred		Common	
	No. of shares	%	No. of shares	%
Joseph Arbour	none		293	13.3
Emma Arbour	none		290	11.8
Everett J. Arbour	none		293	13.3
Helen Arbour	none		180	8.2
Everett J. Arbour, Trustee for Shirley Arbour	none		40	1.8
Everett J. Arbour, Trustee for Frances Arbour	none		40	1.8
John W. Ghent	none		35	1.6
Elsie Cotter Ghent	none		41	1.8
John W. Ghent, Trustee for the benefit of:				
Mary Elizabeth Ghent	none		5	.2
Elsie G. Ghent	none		5	.2
Walter H. Ghent	none		5	.2
John W. Ghent, Jr.	none		5	.2
Barbara A. Ghent	none		5	.2
Helen B. Joseloff	none		40	1.8
Phoenix Security Corp.	none		774	35.2
Karl E. Simpson	none		32	1.5
Wendell E. Simpson	none		43	2.0
Laura Bess Payson	none		43	2.0
Hazel E. Simpson	none		43	2.0
Alexis P. Scott	none		17	.8
			2,199	100.0

## McCARTHY FREIGHT SYSTEM, INC.

John J. McCarthy	none		2,335	31.13
George E. Bertucio	none		900	12.00
Charles F. McCarthy	none		665	8.89
Isabel J. McCarthy	none		1,000	13.33
Kathleen E. McCarthy	none		1,000	13.33
Alexander W. Chisholm and Edwin F. Weber, trustees under an indenture of trust dated June 8, 1940, for the benefit of the following persons, respectively:				
Elizabeth Jane Bertucio & Others	none		400	5.33
Mary Louise Bertucio & Others	none		400	5.33
Robert Charles Bertucio & Others	none		400	5.33
Louise M. Bertucio & Others	none		400	5.33
			7,500	100.00

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## M. MORAN TRANSPORTATION LINES, INC.

Michael M. Moran	none			
Norman Joseph	none			
Amelia M. Moran	none		250	100.0
Mamie Moran	none			
As trustees:				
Michael M. Moran	none			
Norman Joseph	none			
Amelia M. Moran	none			
			250	100.0

<sup>1</sup> This company has a small contract operation and agrees that if the application be granted it will at once seek permission to discontinue or dispose of this contract operation.

## Carrier Companies—Continued

## HORTON MOTOR LINES, INC.

Stockholders	Preferred		Common	
	No. of shares	%	No. of shares	%
H. H. Horton	none		8,688	82.0
Mrs. D. D. Horton	none		636	6.0
Henry Clay Horton	none		636	6.0
Benjamin Stevens Horton	none		636	6.0
J. A. Sutton	none		1	
J. D. Kluttz	none		1	
C. A. Cochran	none		1	
J. N. Johnson	none		1	
J. B. Evans	none		1	
J. D. Lawson	none		1	
B. L. Frazer	none		1	
M. B. Speir, Jr.	none		1	
Employees 8% preferred stock to be redeemed before closing date	2,666	100.0	none	
	2,666	100.0	10,804	100.0

## BARNWELL BROTHERS, INC.

R. W. Barnwell	18 1/10	5.7	20	2.0
Willard Smith Barnwell	32	16.1	40	4.0
Robert William Barnwell, Jr.			6 1/2	.65
John H. Barnwell	14 1/10	4.5	59	5.9
Deloris Morrow Barnwell	20	6.2	54	5.4
Mary Barnwell			5	.5
James A. Barnwell	14 1/10	4.6	48 1/2	4.85
Cornelia Vincent Barnwell	21	6.5	70	7.0
Hannah Bomse			28	2.8
William R. Lacey	4 1/10	12.5	82	8.2
Arthur D. Crowe			28	2.8
M. M. Stuart	15	4.7	50	5.0
F. H. Mendenhall			10	1.0
Mary Thomas Walker			5	.5
P. L. Walker	3	1.0	5	.5
J. Hardy Hurst			5	.5
A. Hall Barnwell			4	.4
R. P. Harrison, Jr.	20	6.2		
E. C. Crowder	10	3.1		
223 Wachovia Bank and Trust Company as trustee under various trust agreements dated May 10, 1940, is the owner for the benefit of the following persons respectively:				
Robert William Barnwell, Jr.			18	1.8
Willard Holt Barnwell			36	3.6
Joseph Clarendon Barnwell			36	3.6
Eleanor Smith Barnwell			20	2.0
Betty Lynn Barnwell			20	2.0
Richard Brantley Barnwell			20	2.0
Julian Forrest Barnwell			20	2.0
Barnwell Warehouse & Brokerage Co.	93	28.9	310	31.0
	323	100.0	1,000	100.0

## TRANSPORTATION, INC.

A. S. Clay	none		25,000	100.0
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## SOUTHEASTERN MOTOR LINES, INC.

Clifford C. Brock	none		207.5	59.5
B. L. Huntsman	none		155	31.9
J. T. Howard	none		35	7.0
Vance P. Graham	none		12.5	2.5
			560	100.0

## ARROW CARRIER CORPORATION

The Transport Company	1,120	81.2	1,976.5	100.0
Stock 20% being presently acquired	260	18.8		
	1,380	100.0	1,976.5	100.0

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## Noncarrier Companies

## SOUTHERN NEW ENGLAND TERMINALS, INC.

Stockholders	Preferred		Common	
	No. of Shares	Par Value	No. of Shares	Par Value
Isabel J. McCarthy	none	0.00	134	44.68
Kathleen E. McCarthy	none	0.00	66	22.00
George E. Bertucio	none	0.00	36	12.00
Alexander W. Chisholm and Edwin F. Weber, trustees under an indenture of trust dated June 6, 1940 for the benefit of the following persons, respectively:				
Elizabeth Jane Bertucio & Others	none	0.00	16	5.33
Mary Louise Bertucio & Others	none	0.00	16	5.33
Robert Charles Bertucio & Others	none	0.00	16	5.33
Louise M. Bertucio & Others	none	0.00	16	5.33
			300	100.00

## BROWN EQUIPMENT &amp; MFG. CO., INC.

H. D. Horton	none	0.00	97 1/2	97.575
J. A. Sutton	none	0.00	4 1/2	.485
J. L. Brown	none	0.00	4 1/2	.485
J. N. Johnson	none	0.00	4 1/2	.485
J. D. Klutiz	none	0.00	4 1/2	.485
C. A. Cochran	none	0.00	4 1/2	.485
			1,000	100.000

## CONGER REALTY COMPANY, INC.

H. D. Horton	none	0.00	98 0/10	.98
R. G. Conger	none	0.00	97 1/10	.97
O. P. Roberson	none	0.00	95 1/10	.97
			1,000	100.00

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## BARNWELL WAREHOUSE &amp; BROKERAGE CO.

R. W. Barnwell	12	5.2	1	5.0
Willard Smith Barnwell	84	36.8	1	5.0
John H. Barnwell			1	5.0
Deloris Morrow Barnwell	36	15.8	1	5.0
James A. Barnwell	48	21.1	2	10.0
Hannah Bomse			1	5.0
William R. Lacey	48	21.1	1	5.0
Arthur D. Crowe			1	5.0
Wachovia Bank and Trust Company, trustee under agreements dated May 10, 1940, for the benefit of the following persons, respectively:				
Willard Holt Barnwell			1	5.0
Joseph Clarendon Barnwell			1	5.0
Eleanor Smith Barnwell			1	5.0
Betty Lynn Barnwell			1	5.0
Richard Brantley Barnwell			1	5.0
Julian Forrest Barnwell			2	10.0
Dorothy Lea Barnwell			2	10.0
Robert Alexander Barnwell				
	228	100.0	20	100.0

## SOUTHERN NEW ENGLAND TERMINALS

This company owns several terminals which are leased to McCarthy Freight System, Inc.

## BROWN EQUIPMENT &amp; MFG. CO., INC.

This is a manufacturing company making and selling equipment to the motor vehicle industry.

## CONGER REALTY COMPANY, INC.

This company owns several terminals which are leased to the Horton Motor Lines, Inc.

## BARNWELL WAREHOUSE &amp; BROKERAGE CO.

This company owns a warehouse and a few pieces of equipment. The warehouse is used to store freight and the equipment is used in conjunction with the operation of Barnwell Brothers, Inc.

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WHOLLY OWNED SUBSIDIARIES OF  
CONSOLIDATED MOTOR LINES, INC. (CONN.)

## CONSOLIDATED MOTOR LINES, INC. (MASS.)

This company owns certain equipment which is held in its name because of state licensing requirements.

## UNITED ARBOUR EXPRESS, INC.

This company has a small contract operation which it is hereby agreed will be discontinued or disposed of should the withdrawal application be granted.

## UNITED SALES &amp; MFG. CO.

This company is engaged in buying and selling equipment connected with the motor truck industry.

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## EXHIBIT B-8

BRIEF DESCRIPTION OF NATURE, EXTENT AND SCOPE OF MOTOR CARRIER  
OPERATIONS OF CARRIERS, CONTROL OF WHICH : PROPOSED TO BE  
ACQUIRED

The following motor carriers perform transportation as common carriers of commodities generally, over regular and irregular routes in and between the States shown opposite their names, and pursuant to operating authority in docket numbers as indicated:

Horton Motor Lines, Inc.: Georgia, South Carolina, North Carolina, Virginia, West Virginia, Maryland, Delaware, Penn-

sylvania, New Jersey, New York, District of Columbia. Docket Nos. M. C.

Barnwell Bros., Inc.: South Carolina, North Carolina, Virginia, West Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New York, District of Columbia. Docket Nos. M. C.

Southeastern Motor Lines, Inc.: Tennessee, North Carolina, Virginia, West Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New York, District of Columbia. Docket Nos. M. C.

Transportation, Inc.: Louisiana, Alabama, Florida, Georgia, South Carolina, North Carolina, Tennessee. Docket Nos. M. C.

McCarthy Freight System, Inc.: Massachusetts, Rhode Island, Connecticut, New York. Docket Nos. M. C.

Consolidated Motor Lines, Inc.: Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania. Docket Nos. M. C.

M. Moran Transportation Lines, Inc.: New York, Pennsylvania, Ohio, New Jersey. Docket Nos. M. C.

Arrow Carrier Corporation: Pennsylvania, New Jersey, New York, Docket Nos. M. C.

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## EXHIBIT C

## NATURE OF PROPOSED TRANSACTION AND TERMS AND CONDITIONS THEREOF

Attached to original and each copy of this application are the following exhibits, identified as indicated:

C-1—Copy of contract for acquisition of the stock of Horton Motor Lines, Inc., a motor carrier. Contracts of like effect as to the body thereof have been entered into with the various other carriers, control of which is proposed to be acquired.

C-1a—Copy of contract for acquisition of the stock of Conger Realty Co., Inc., a non-carrier company. Contracts of like effect as to the body thereof have been entered into with the various other non-carriers, control of which is proposed to be acquired.

C-1b—Copies of Exhibits A, E, F, H, I and J of the aforesaid contracts of the carrier and non-carrier companies, in each case where such exhibits differ as to terms or conditions from the terms or conditions of the like exhibits in the aforesaid Horton and Conger contracts.

C-1c—Statement containing copy or explanations of any other material differences between the aforesaid Horton and Conger contracts, and the contracts of any of the aforesaid carrier and non-carrier companies.

C-2—No statement containing such data as applicant feels will properly explain and support the financial consideration involved

is furnished because the proposed plan contemplates no consideration other than an exchange of stock as more particularly set forth in Exhibits C-1 thru C-1a, b, c.

C-3—Signed opinion of counsel that the transaction proposed will be legally authorized and valid, if approved by the Commission, with specific reference to any specially pertinent provisions of charter or articles of incorporation of applicant.

C-4—Statement containing name and address of each independent public, or independent, certified public accountant who prepared, or directed the preparation of, the data described in Exhibits A and B: Harry J. Reicher and Company, Empire State Building, New York, New York.

C-5—Map showing operations of parties involved in this proceeding.

C-6—Statement containing the following information for each item of encumbered real property proposed to be acquired: (a) Description of the real property encumbered. (b) Amount of encumbrance and description thereof.

C-7—"Giving Effect" Balance Sheets for applicant as of the latest available date, showing the estimated effect of the consummation of the transaction proposed.

229 C-8—For "Giving Effect" Income Statement for the calendar year to latest available date for applicant, showing estimated effect if the proposed transaction had been consummated prior to the period covered; see Exhibited B-6 attached hereto.

C-9—For brief description of nature, extent and scope of non-carrier companies, controls of which is proposed to be acquired, see Exhibit B-7 attached hereto.

Agreement made this 11th day of June 1941, between H. D. Horton, Charlotte, N. C.; Mrs. H. D. Horton, Charlotte, N. C.; Henry Clay Horton, Charlotte, N. C.; Benjamin Stevens Horton, Charlotte, N. C.; J. A. Sutton, Charlotte, N. C.; J. D. Kluttz, Charlotte, N. C.; C. A. Cochran, Charlotte, N. C.; J. N. Johnson, Baltimore, Md.; J. B. Evans, New York City; J. D. Lawson, Charlotte, N. C.; B. L. Frazier, Charlotte, N. C.; M. B. Speir, Jr., Charlotte, N. C.; hereinafter referred to as "First Parties," and Associated Transport, Inc., a Delaware corporation; hereinafter referred to as "Second Party."

Witnesseth: Substantial economies and increased efficiency can be accomplished by combining the ownership and control of the stock and/or assets of certain motor carriers of freight now operating along the Atlantic seaboard, and said combined ownership

and control would result in improved motor freight movement favorably affecting the shipping public, would promote safe and sound economic conditions in transportation and would aid and contribute to the progress of the national defense program.

Such combined ownership and control is a joint enterprise to carry out a plan of reorganization, and Second Party is prepared to act as the agency for accomplishing said combination of ownership and control and said plan of reorganization;

231 Now, therefore, in consideration of the mutual promises of the parties hereinafter contained, it is agreed:

First: The representations and warranties made by First Parties on Exhibits A to J hereto annexed are made part of this agreement and incorporated herein by reference.

First Parties represent and warrant that the books and records of the company named on Exhibit A hereto annexed, truthfully, accurately and completely contain all of the information necessary to disclose the correct financial condition of said company as of April 30, 1941, and to disclose the correct net profits of said company for the twelve months' period ending April 30, 1941.

Second: Second Party represents and warrants (1) that it has no interest, direct or indirect, in any motor, rail or water carrier whether operating or nonoperating, either as a stockholder or by means of a holding or investment company or companies, voting trust or trusts, or in any other manner, other than that which results from the agreements which are to be executed simultaneously herewith as provided in paragraph Fourteenth hereof; (2) that it has no subsidiaries or affiliates and has incurred no liabilities of any nature, except for compensation for services, for expenses in connection with its organization, for legal fees in connection with the preparation of this agreement and the agreements which are to be executed simultaneously herewith as provided in paragraph Fourteenth hereof, and for the effectuation or attempted effectuation of the purposes thereof; (3) that Second Party is a validly organized Delaware corporation, that its directors at this time are H. D. Horton, and B. M. Seymour, 232 and its officers are: Chairman of the Board, H. D. Horton; president, Burge M. Seymour; vice president, office vacant; secretary, B. D. Ryan; treasurer, Burge M. Seymour; that the only issued and outstanding stock of Second Party is 1,000 shares of common stock owned on the books of Second Party by H. D. Horton, and that said shares of stock are fully paid; (4) that the charter of Second Party and the amendments thereto are as filed in the office of the Secretary of State of Delaware, that no amendments to said charter have been filed subsequent to May 26th, 1941, and that the authorized stock, the classes, preferences

and rights thereof are as set forth in said charter and amendments; (5) that there are no agreements, either written or oral, concerning the sale, transfer or other disposition of the authorized and unissued stock of Second Party, except such agreements as are to be executed simultaneously herewith as provided in paragraph Fourteenth hereof.

Third: Each of the First Parties agrees to exchange all of the issued and outstanding capital stock shown on Exhibit A annexed hereto to be owned by him in the company named on said Exhibit, for the 6% cumulative convertible \$100 par value preferred stock, and for the \$1 par value common stock of Second Party (all of the said stock of the Second Party to be fully paid and non-assessable, free and clear of any and all liens and encumbrances

whatsoever), the number of each class of said shares which  
233 First Parties collectively shall receive, to be arrived at as follows:

(1) The number of preferred shares to be received by First Parties shall be such as to give said First Parties collectively a total par value of preferred shares equal to four-fifths of the net worth, as determined in the manner hereinafter provided, of the company named on Exhibit A annexed hereto as of April 30, 1941.

(2) The number of common shares to be received by First Parties shall be such as to give said First Parties collectively a total par value of common shares to be arrived at by deducting from the net profits, determined in the manner hereinafter provided, of the company named on Exhibit A for the twelve months ending April 30, 1941, a sum equal to 6% of the par value of the preferred shares to be received by First Parties collectively under subdivision (1) of this paragraph Third, and by dividing the remainder by 2.

First Parties agree to furnish to Harry J. Reicher & Company, certified public accountants of the State of New York, with offices in New York City, no later than May 31, 1941, a balance sheet of the company named on Exhibit A as of April 30, 1941, and an operating statement of said company for the twelve months' period ending April 30, 1941. Said balance sheet and operating statement shall be drawn and prepared in accordance with Interstate Commerce Commission practices and procedure in effect on April 30, 1941.

Net worth, for the purposes of subdivision (1) of this paragraph Third, and net profits for the purposes of subdivision (2) hereof, shall be determined as follows: The net worth and net profits of said company as shown on the above mentioned balance sheet and operating statement shall be adjusted by Harry J. Reicher of Harry J. Reicher & Company in the following items and respects:

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(a) All values for good-will, franchises, costs of acquiring franchises, organization expenses, and such deferred expenses as are not in his opinion apportionable on an accurate mathematical basis, shall be eliminated and disregarded.

(b) Provision shall be made for taxes for the twelve months' period ending April 30, 1941, on the basis of 1940 rates.

(c) An inventory of tires on equipment shall be taken at the beginning and end of the twelve months' period ending April 30, 1941, and computed at 50% of cost.

(d) The reserve for uncollectible freight accounts receivable shall be one-sixth of one percent of the freight revenues of said company for the twelve months ending April 30, 1941, or the average actual annual loss of said company on such accounts for the three years ending December 31, 1940, whichever is greater, and said reserve shall be established both at the beginning and end of said twelve months' period.

(e) The following annual depreciation rates shall be applied to the types of assets enumerated below.

(i) Furniture, fixtures, and other equipment, 8%.

(ii) Brick or concrete buildings owned in fee, 2%.

(iii) Leasehold improvements, excluding buildings, rate to be determined by the term of the lease not taking into account any options for renewal.

(iv) Buildings constructed on leased property, rate to be determined by the term of the lease, taking options for renewal, if any, into consideration, but in no event lower than the rate provided in subdivision (ii) or (v) hereof.

(v) Other buildings, fair rate to be fixed in his discretion within the limits, if any, set by the Treasury Department.

235 (vi) Trucks, 25%.

(vii) Trailers, 10%.

(viii) Tractors, light, 25%; heavy, 20%.

(ix) Passenger cars, 33 $\frac{1}{3}$ %.

(x) Service cars, 25%.

Depreciation with respect to any of the items from (vi) to (x) hereof inclusive, shall cease when 95% of the cost of any said item has been depreciated.

(f) Any net profits or losses arising out of entries made by the company named on Exhibit A during the twelve months' period ending April 30, 1941, adjusting assets or liabilities or inventories on parts, tires, supplies, stationery, gas and oil, shall be charged or credited directly to surplus, unless the amount allocable to said twelve months' period can be determined. If the amount allocable to said twelve months' period can be determined, it shall be treated as a profit or loss for said twelve months.

(g) If any item for rebuilding or maintenance of revenue equipment has been capitalized by the company named on Exhibit A while the book value of said equipment is more than 20% of its original cost, the amount so capitalized shall be eliminated, except that any expenditures for completion of vehicles made during the first sixty days of ownership may be capitalized.

(h) In any respect where a principle or method of accounting has been used or applied by the company named on Exhibit A which is not in accord with the principles or methods of accounting prescribed in the Interstate Commerce Commission's "Uniform System of Accounts" in effect on April 30, 1941, adjustments shall be made to conform to such principles or methods; if no applicable principle or method is prescribed in said publication, adjustment, as in his opinion may seem proper, shall be made by him in any respect where a principle or method of accounting has been used or applied by said company which is not, in his opinion, in accord with sound accounting principles or methods, except that nothing herein contained shall authorize adjustments inconsistent with or different from those provided in items (a) to (g) hereof inclusive where those items are applicable, nor authorize any adjustment in connection with any compensation for services item.

(i) To correct any inaccuracies or discrepancies whatsoever.

236 In all cases where reserves are set up or adjusted, the rate or method applied at April 30, 1941, shall likewise be applied at May 1, 1940, to determine the correct allocation of profits or losses between the said twelve months' period and prior periods.

It is expressly understood and agreed that for the purpose of determining the number of shares of preferred stock to be received by First Parties collectively, the following method shall be followed: Harry J. Reicher shall first determine the net worth of the company named on Exhibit A as adjusted in all respects described in subdivisions (a) to (d) and (f) to (i) hereof all inclusive. He shall then determine whether the adjustments provided for in subdivision (e) result in a net increase or net decrease in value of the items affected thereby.

If the adjustments under subdivision (e) result in a net increase in said values, the amount of said increase shall not entitle First Parties to any shares of preferred stock therefor, but they shall receive therefor a total par value of common shares equal to 5% of four-fifths of the amount of said increase.

If the adjustments under subdivision (e) result in a net decrease in said value, the amount of said decrease shall be deducted from the net worth of said company as adjusted in all

respects described in subdivision (a) to (d) and (f) to (i) hereof all inclusive.

It is further understood and agreed that all determinations by Harry J. Reicher under the provisions of this paragraph

Third, shall be binding and conclusive on all parties here-  
237 to, unless within fifteen days after mailing of said determinations by Harry J. Reicher to the designee provided for herein, said designee shall mail to all of the designees under the contracts described in paragraph Fourteenth hereof, at the addresses set forth in their respective contracts, notice that he disputes said determinations, or any of them, with a statement of his reasons therefor, and unless two-thirds of all said designees, including the one provided for herein, shall revise the determinations, or any of them, made by Harry J. Reicher and mail notice of their action to the designee provided for herein. Should at least two-thirds of said designees fail to meet, hear and reach a vote upon such disputed determinations within fifteen days after such notice of dispute is mailed to them, performance of this agreement shall, upon the written election of First Parties, be suspended until at least two-thirds of said designees shall have met, heard the dispute with regard to such determinations and reached a vote thereon; but all determinations by Harry J. Reicher shall remain in force unless upon such vote it is revised by the vote of two-thirds of all said designees, including the one provided for herein. If such determinations, or any of them, are revised by two-thirds of said designees, such revision shall, insofar as it affects and with respect to the items so affected, supersede his determinations and shall be final, binding and conclusive on all parties, unless within ten days after such revision, the designee provided for herein shall elect to accept the original determinations by Harry J. Reicher, in which event said original determinations shall be final, binding and conclusive on all parties.

238 Fourth: It is agreed that each of the First Parties or their respective nominees shall receive that percentage of the total number of shares of each class of stock of Second Party to be received by all of the First Parties to this agreement collectively, which is shown opposite his name in columns 4 and 5 on Exhibit A. In determining the amount of common or preferred stock to be received by First Parties either collectively or by any of them, a fractional share of one-half or over shall entitle such First Parties to a full share, and a fractional share of less than one-half is hereby waived by each of said First Parties.

Fifth: For the purpose of providing for obligations incurred or to be incurred by Second Party in connection with bringing

about or attempting to bring about the combined ownership and control and reorganization contemplated hereby, each of the First Parties agrees to purchase or cause to be purchased at par, that percentage of 8,555 shares of the common stock of Second Party which is set forth next to his name in column 5 on Exhibit A, such stock to be paid for in cash at the time of the execution hereof. Second Party agrees to sell said shares of stock to First Parties, and agrees that such shares shall be nonassessable and free and clear of all liens and encumbrances.

Sixth: First Parties warrant and agree that between April 30, 1941, and the closing date as hereinafter fixed, or the time of cancellation of this agreement in the manner hereinafter provided:

239 (1) No equipment or other assets of the company named on Exhibit A hereof has been or will be sold, exchanged or otherwise disposed of, except in the ordinary course of business, and the equipment and facilities of said companies have been and will be maintained continuously during said period in accordance with existing standards of maintenance.

(2) Neither the company named on Exhibit A, nor First Parties acting or purporting to act on its behalf, has or will purchase, lease or build, or make any commitment to purchase, lease or build, any property except in the ordinary course of business and for a reasonable consideration in the light of prevailing markets, and said company has not and will not incur any expenses or liabilities except in the ordinary course of business and for a reasonable consideration in the light of prevailing markets.

(3) No stockholder or officer of the company named on Exhibit A has received or shall receive any greater compensation or expense allowance (as distinguished from equal expenses) than the total of his compensation and expense allowance for the twelve months' period ending April 30, 1941, prorated in accordance with the time elapsed between April 30, 1941, and the closing date hereof, or the cancellation hereof, in the manner hereinafter provided. No compensation or expense allowance agreement extending beyond the closing date hereof has been or will be made with any stockholder, officer or Executive employee of said company.

(4) Insurance coverage in at least the amount and kind set forth on Exhibit G annexed hereto, will be continuously maintained in force and effect.

(5) Neither the company named on Exhibit A, nor First Parties acting or purporting to act on its behalf, has or will acquire any interest, direct or indirect, in any other motor carrier or any rail or water carrier.

(6) The company named on Exhibit A has not and will not authorize the creation of any bonded indebtedness, secured or unsecured.

(7) Any sale, hypothecation or transfer by any of First Parties of his stock in the company named on Exhibit A, shall be expressly subject to all of the terms, conditions and provisions of this agreement.

(8) There have been and will be no changes in the charter or bylaws of the company set forth on Exhibit A.

(9) No stock shown on Exhibit A to be authorized but unissued, shall be issued.

(10) No dividends have been or will be declared or paid by the company named on Exhibit A.

240 (11) No distribution from assets will be made by the company named on Exhibit A except in the usual course of business and except as expressly authorized by this contract.

It is understood and agreed that on or after June 1, 1941, any one or all of the provisions contained in this paragraph Sixth may be modified by written agreement between Second Party and two-thirds of all designees provided for in the contracts described in paragraph Fourteenth hereof including the designee provided for herein.

Seventh: Second Party warrants and agrees that it will not, prior to the closing date as hereinafter fixed or the time of cancellation of this agreement in the manner hereinafter provided:

(a) Amend or modify its charter or bylaws.

(b) Consolidate or merge with any other company, or sell, lease or mortgage all or substantially all of its assets.

(c) Create any bonded indebtedness, secured or unsecured.

(d) Create or issue any different class of stock than those described in this agreement.

(e) Issue any shares of any of the authorized classes of its stock in addition to those already issued and those which may be issued pursuant to paragraphs Third and Fifth of this agreement, and pursuant to the corresponding paragraphs of the agreements which are to be executed simultaneously herewith as provided in paragraph Fourteenth hereof.

It is understood and agreed that any one or all of the provisions contained in this paragraph Seventh may be modified by written agreement between Second Party and two-thirds of all designees provided for in the contracts described in paragraph Fourteenth hereof including the designee provided for herein.

241 Eighth: Upon the execution of the agreements to be executed simultaneously herewith as provided in paragraph Fourteenth hereof, Second Party agrees that it will promptly file

with the Interstate Commerce Commission such application or applications, including but not limited to applications for merger or consolidation and amendments thereto as may be deemed necessary or advisable by Second Party for the required authority to bring about the combined ownership and control contemplated herein, including such authority for the issuance of its securities as may be by Second Party deemed desirable or necessary in connection therewith.

Ninth: First Parties agree to cooperate in all respects with Second Party to the extent needed or desirable in the preparation, signing, filing and prosecution of the application or applications to the Interstate Commerce Commission above referred to, and First Parties further agree to furnish or cause to be furnished without expense to Second Party, all necessary exhibits, data and information, including financial reports, in as many copies and in such form as may be required for the filing of said application or applications.

First Parties further agree that all books, papers and records, both corporate and financial, of the company listed on Exhibit A shall be open to and available for inspection by Second Party and/or by Harry J. Reicher & Company between the date hereof and the closing date as hereinafter fixed, or the cancellation hereof

in the manner hereinafter provided, and First Parties  
242 further agree that during the same period Second Party and/or Harry J. Reicher & Company may make such inspection of the corporate and financial books, papers, records and property of said company as may be desired by Second Party and/or Harry J. Reicher & Company in securing information as to and in verifying the representations, warranties and undertakings contained in this agreement.

Tenth: Second Party agrees to defray all auditing expenses incurred in connection with the work to be done by Harry J. Reicher & Company under paragraph Third hereof, and to pay all expenses incurred in connection with the filing and prosecution of the aforesaid application or applications before the Interstate Commerce Commission, except expenses of officers or employees of the company named on Exhibit A annexed hereto whose testimony may be required or desirable in hearings in connection with this matter before the said Interstate Commerce Commission.

Eleventh: Within sixty days after execution and delivery of this agreement, each of First Parties agrees to deliver to and deposit with the designee provided for herein all of the shares of stock shown on Exhibit A annexed hereto to be owned by him in the company named on said Exhibit. The certificates of stock so delivered shall be endorsed in blank or accompanied by stock powers running to Second Party with signatures guaranteed by a

member bank of the Federal Reserve System, or a member of the New York Stock Exchange, and shall be accompanied by the required stock transfer stamps or cash equal to the cost thereof.

243. Within five days after the expiration of said sixty-day period, the designee provided for herein shall report in writing to Second Party the number of shares of stock received by him, from whom received, and any other pertinent information that may be requested by Second Party.

Within ten days after decision by the Interstate Commerce Commission on the application or applications referred to in paragraph Eighth hereof, provided such decision shall constitute approval by the Interstate Commerce Commission as hereinafter defined in paragraph Fifteenth hereof, the designee provided for herein is authorized, empowered, and directed to deliver to Second Party all of the shares of stock deposited with him by First Parties as aforesaid, as well as all of his own shares of stock in the company named on Exhibit A, together with stock powers, signature guarantees, transfer stamps, or cash as provided above.

Twelfth: Simultaneously with the delivery, as provided in paragraph Eleventh hereof, of the shares of stock in the company named on Exhibit A by the designee provided for herein to Second Party, Second Party shall deliver to said designee (who is hereby authorized and empowered to receive said stock for and on behalf of each of First Parties) stock certificates or temporary stock certificates made out to each of First Parties or their nominees for the number of shares of preferred and common stock which each of said First Parties is to receive under paragraphs Third and Fourth hereof, less 15% of the respective amount of shares of each class of stock to be received by each First Party. The 15% of the preferred shares and the 15% of the common shares which Second Party

244 is authorized to withhold as above provided, shall be evidenced by the issuance of separate certificates therefor (to be endorsed in blank by each of the First Parties before delivery to them of the balance of their stock hereunder, or to be accompanied by stock powers duly executed by First Parties and delivered to Second Party before delivery to them of the balance of their stock hereunder), and shall be held by Second Party as security upon the following terms:

(a) If any of the warranties, representations or statements herein made by First Parties are incorrect or untrue and if Second Party should suffer loss thereby; or

(b) If any liabilities, unforeseen at the time of the audit to be made by Harry J. Reicher & Company under paragraph

Third hereof or undisclosed by said audit, should develop and reduce the net worth and/or reduce the net profit for the twelve months' period ending April 30, 1941, of the company named on Exhibit A below that shown on said audit; or

(c) If any contingent liability, for which a reserve is set up either on the books of said company or in the course of said audit by Harry J. Reicher & Company, should become an accrued liability in a greater amount than the sum reserved against it in said audit; or

(d) If the First Parties should fail to perform any of the terms and conditions hereof on their part to be performed and Second Party should suffer loss on account thereof;

Then in any one or more of the events just stated, Second Party shall have the right to sell the shares of stock held as security by it or any part thereof, either at public or private sale, at such price as may be available, upon notice mailed ten days before said sale to each of First Parties at their respective addresses noted at the outset of this agreement, stating the time and place thereof, and apply the net proceeds thereof after deducting the expenses of the sale against the loss sustained by it. Should the net proceeds of any such sale exceed the amount of Second Party's loss, each of First Parties' proportionate share of said excess shall be turned over to him. Second Party shall have the right,

245 so far as consistent with law, to purchase any shares of stock sold pursuant hereto. Second Party shall have the right to withhold the delivery of the shares of stock herein referred to for the purposes enumerated above for a period of three years from the closing date hereof, provided, however, that at any time or from time to time during said period, Second Party on two-thirds' vote of its Board of Directors, may release all or part or parts thereof. At the expiration of three years from the closing date hereof, any of the aforesaid shares of stock remaining in the hands of Second Party (except any that it may have purchased at a sale held pursuant hereto) shall be delivered to each of First Parties in the proportions due them if no claim against which such stock is held as security has been made by Second Party and remains undisposed of at that time; in the event such claim has been made and is undisposed of, Second Party may hold said stock until said claim is finally disposed of.

First Parties shall not be liable in damages for any amount in excess of the stock withheld hereunder by reason of the happening of any of the events set forth in this paragraph Twelfth, but the provisions hereof shall not be deemed to exclude or in any wise impair Second Party's right of rescission for a breach

of this agreement, or for breach of warranty or for misrepresentation.

First Parties may at any time substitute in lieu of the stock held as above provided, a good and sufficient surety company bond in an amount acceptable to Second Party; Second Party shall be the sole judge as to the amount of said bond.

Thirteenth: First Parties hereby jointly and severally appoint and designate H. D. Horton of Charlotte, N. C. (described at various places in this agreement as "designee") as their 246 true and lawful attorney-in-fact, for them and each of them in their respective names, places and steads, with full power and authority to said H. D. Horton to perform such acts and grant or withhold such consents and approvals and do whatever may be required of or permitted to the designee hereunder, as fully and to all intents and purposes as said First Parties jointly or severally might or could do if personally present, hereby ratifying and confirming as binding and conclusive upon them and each of them all that said H. D. Horton shall do or cause to be done by virtue hereof.

The power and authority vested in the above designee shall be irrevocable unless revoked by the unanimous action of First Parties or their respective successors in interest to their stock, communicated to Second Party in writing at least ten days before such revocation shall take effect, and unless such revocation shall be accompanied by the unanimous appointment in writing of a substitute designee by First Parties. In the event of the death, resignation or incapacity of said H. D. Horton, First Parties agree, within ten days of such death, resignation or incapacity, to appoint a substitute designee who shall have all of the powers and authority granted to said H. D. Horton, and to notify Second Party promptly upon such appointment of the identity of such substitute designee. First Parties and each of them agree that the selection of a substitute designee in this contingency may be made by the holders of more than 50% of the stock herein contracted to be sold to Second Party. For the purposes of this paragraph Thirteenth only, in determining the holders of more than 50% of the stock contracted to be sold, all differences between classes and preferences of stock shall be ignored, and each share of stock, regardless of class or preference, shall be counted as one.

If at any time the designee provided for herein shall 247 for any reason be no longer acting as such, and if no substitute shall have been appointed to take his place as provided herein, then any provision contained in any paragraph of this agreement which requires or permits the consent, act or

approval of the designee provided for herein is waived. In any case in which provision is made in this agreement for action by a specified fraction of the total number of the designees under this and the other contracts described in paragraph Fourteenth hereof, such action shall, in any case where a vacancy exists in any of the designations of designees, be sufficient if taken by the specified fraction of the designees actually appointed and capable of acting.

Fourteenth: Second Party agrees that it will not at any time prior to the closing date hereof enter into any agreement for the acquisition of stock or any interest in any company other than those listed below:

Horton Motor Lines, Incorporated.  
Consolidated Motor Lines, Incorporated.  
Barnwell Brothers, Incorporated.  
McCarthy Freight System, Incorporated.  
M. Moran Transportation Lines, Incorporated.  
Southeastern Motor Lines, Incorporated.  
The Transportation, Incorporated.  
Southern New England Terminals, Incorporated.  
Barnwell Warehouse & Brokerage Company.  
Conger Realty Company.  
Brown Equipment and Manufacturing Company.

Second Party further agrees that it will not enter into any agreement for the acquisition of stock or any interest in any of the companies named above without the written consent of the designee provided for here (a) as to the form and substance of any such agreement, and (b) as to the sufficiency of the number of shares of stock represented by the stockholders signing the same.

It is understood and agreed that any agreements to be entered into by Second Party with the stockholders of any of the companies listed above will be entered into simultaneously with the delivery of this contract duly executed by First Parties to Second Party and with the execution hereof by Second Party, and First Parties and each of them jointly and severally authorize and empower the designee provided for herein to decide in his sole discretion whether to deliver this contract duly executed to Second Party and to decide in his sole discretion before delivery hereof (a) whether the form and substance of each of the agreements to be executed simultaneously herewith is satisfactory; (b) whether a sufficient number of shares of stock is represented by the stockholders signing each such agreement; and (c) whether the stockholders of a sufficient number and a satisfactory combination of the companies listed

above are delivering, duly executed, such agreements simultaneously herewith; and this contract shall not be effective for any purpose unless the decision of the designee as to the satisfactory nature of the items above specified is endorsed upon the original hereof which is delivered to Second Party.

Fifteenth: Wherever the expression "closing date" is used herein, it shall be deemed to refer to the tenth day after approval by the Interstate Commerce Commission as such approval is herein defined, or to such later or extended date as may be agreed upon in writing between Second Party and the majority of all designees provided for in the contracts described in paragraph Fourteenth hereof, including the designee provided for herein.

Wherever the expression "approval by the Interstate Commerce Commission" is used in this agreement, it shall be deemed to mean and include a final order by the Interstate Commerce Commission approving: (a) without conditions the acquisition by Second Party of the stock contracted to be purchased by it hereunder and under all agreements with the stockholders of carriers executed simultaneously herewith; or (b) without conditions the acquisition by Second Party of the stock contracted to be purchased by it hereunder and under such agreements as are executed simultaneously herewith with the stockholders of all of the following: 1. Horton Motor Lines, Incorporated; 2. Consolidated Motor Lines, Incorporated; 3. Barnwell Brothers, Incorporated; 4. McCarthy Freight System, Incorporated; 5. M. Moran Transportation Lines, Incorporated; or (c) the stock acquisition referred to in subdivision (a) or (b) hereof, notwithstanding that such approval may be qualified or conditioned upon the consolidation or merger with each other and/or with the Second Party of one or more of the carriers whose stockholders have executed agreements with Second Party simultaneously.

Should the final order of the Interstate Commerce Commission approve the stock acquisition of one or more of the companies referred to in subdivisions (a) or (b) hereof upon conditions other than those set forth in subdivision (c) hereof, or should such final order deny approval of the stock acquisition of one or more of the companies set forth in subdivision (b) but approve the acquisition of the stock covered by this agreement, First Parties agree that the designee provided for herein may, in his sole discretion, decide that such final order may be deemed "approval by the Interstate Commerce Commission" for all purposes of this agreement, notwithstanding such conditions or denial.

Sixteenth: This agreement may be cancelled (a) at any time up to and including the closing date hereof with the written con-

sent of Second Party and a majority of the designees named in all agreements executed and delivered simultaneously herewith for the acquisition of stock by Second Party, including the  
250 designee provided for herein; (b) by the designee provided for herein if approval by the Interstate Commerce Commission is not granted on or before April 1, 1942; notice of cancellation under this subdivision (b), to be effective, shall be mailed to Second Party within twenty days after April 1, 1942; (c) by the designee provided for herein if the Interstate Commerce Commission, before April 1, 1942, enters a final order which does not constitute approval by the Interstate Commerce Commission as defined in paragraph Fifteenth hereof; notice of cancellation under this subdivision (c), to be effective, shall be mailed to Second Party within ten days after such final order.

It is expressly understood and agreed that the cancellation rights herein provided for shall in no wise affect the purchase and sale of the common shares of Second Party provided for in paragraph Fifth hereof, it being intended that the purchase and sale of said shares are subject to no condition whatsoever.

Seventeenth: First Parties agree that at the time for delivery of their stock to the designee as provided in paragraph Eleventh hereof, they will simultaneously therewith deliver to said designee resignations signed by all of the directors of the company named on Exhibit A (except such, if any, as may be, at the time of such deposit, directors of Second Party) to become effective upon the closing date hereof as defined in paragraph Fifteenth hereof, but not otherwise, and said resignations shall be delivered by said designee to Second Party at the same time he delivers the stock as provided in said paragraph Eleventh to Second Party.

Eighteenth: To the extent that the provisions, if any, contained in Exhibit J differ from or are inconsistent with the provisions of the main body of this agreement, the provisions of Exhibit J shall supersede the provisions contained in the main body of this agreement.

251 Nineteenth: Any breach of this agreement by any of First Parties shall be deemed a breach hereof by all First Parties to the extent of entitling Second Party to rescind this agreement or to refuse to perform the same.

Twentieth: It is expressly understood and agreed that except for the purchase and sale of common stock of Second Party provided for in paragraph Fifth hereof, this agreement shall not become effective unless the Commissioner of Internal Revenue of the United States, on or before the closing date hereof, enters into a closing agreement or closing agreements approved by the Secretary, Under-Secretary or an Assistant Secretary of the Treasury in accordance with the Internal Revenue Act and Code

and Regulations, declaring that the transaction contemplated hereby and by the agreements executed simultaneously herewith with Second Party, are or constitute a tax-free reorganization.

In witness whereof, the individual parties have affixed their hands and seals, and the corporate parties have caused these presents to be duly executed under seal, the day and year first above written.

H. D. HORTON, [18]

*First Party.*

MRS. H. D. HORTON, [18]

*First Party.*

By HENRY CLAY HORTON, [18]

*First Party.*

H. D. HORTON, [18]

*Attorney in Fact*

*First Party.*

BENJAMIN STEVENS HORTON, [18]

*First Party.*

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J. A. SUTTON, [18]

*First Party.*

J. D. KLUTTZ, [18]

*First Party.*

C. A. COCHRAN, [18]

*First Party.*

ASSOCIATED TRANSPORT, INC.

By B. M. SEYMOUR, [18]

*President,*

*Second Party.*

Attest:

B. D. RYAN [CORPORATE SEAL]

*Secretary.*

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### EXHIBIT A

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named hereon; that the ownership of said stock is accurately and truthfully listed hereon; that all of the issued shares of stock are fully paid and non-assessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments or any other claims, except as may otherwise be stated hereon; that there are no agreements, either written or oral, concerning the sale, transfer, or other disposition of any of said stock or

concerning the voting rights or any other rights pertaining thereto, except as noted hereon; that each of First Parties is of lawful age, is both the legal and beneficial owner of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement:

**HORTON MOTOR LINES, INCORPORATED**  
(Name of Company)

**NORTH CAROLINA**  
(State of Incorporation)

Class or classes of stock:	Total number of shares authorized
Preferred, class "A", 8% <sup>1</sup>	10,000
Preferred, class "B", 7% <sup>2</sup> (none outstanding)	10,000
Common, class "C"	50,000
	70,000

1	2	3	4	5
Names of First Parties	Number of shares of preferred stock owned	Number of shares of common stock owned	Percentage of total number of shares of preferred shares of Second Party to be received	Percentage of total number of shares of common shares of Second Party to be received
H. D. Horton	None	8,688	82	82
Mrs. H. D. Horton	None	636	6	6
Henry Clay Horton	None	636	6	6
Benjamin Stevens Horton	None	636	6	6
J. A. Sutton <sup>1</sup>	None	1		
J. D. Klutts <sup>1</sup>	None	1		
C. A. Cochran <sup>1</sup>	None	1		
J. N. Johnson <sup>1</sup>	None	1		
J. B. Evans <sup>1</sup>	None	1		
J. D. Lawson <sup>1</sup>	None	1		
B. L. Frazier <sup>1</sup>	None	1		
M. B. Speir, Jr. <sup>1</sup>	None	1		
Various	2,666	None		
Total number of shares issued and outstanding	2,666	10,004		

<sup>1</sup> These shares have been endorsed in blank to Mr. H. D. Horton.

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**EXHIBIT B**

First Parties represent and warrant that they have not either individually or collectively any interest, direct or indirect, in any motor, rail or water carrier, whether operating or non-operating, either as directors, officers or stockholders, or by means of a holding or investing company or companies, voting trust or trusts, or in any other manner, other than in Second Party, except as follows:

Exceptions: None.

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## EXHIBIT C

First Parties represent and warrant that the following balance sheet has been prepared in accordance with Interstate Commerce Commission practice and procedure and reflects the financial condition of the company to which it relates including contingent liabilities with substantial correctness. First Parties further represent and warrant that the rates of depreciation employed by the company named below during the past five years are as set forth below. First Parties further represent, warrant and agree that all assets of said company, including but not limited to equipment and real estate, are kept on the books of said company at cost, and that they will be, for the four months' period ending April 30, 1941, kept on the books of said company at cost, and that the depreciation rates employed by said company for the four months' period ending April 30, 1941, will be the same as those set forth below for the year 1940.

## HORTON MOTOR LINES, INCORPORATED

(Name of Company)

	1936	1937	1938	1939	1940
Real estate	3.33%	3.33%	3.33%		
Automotive vehicles	31.40%	31.40%	30.42%	30.72%	25.72%
Trailer vehicles	15.32%	15.32%	16.66%	17.02%	15.32%

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## EXHIBIT C

## HORTON MOTOR LINES, INCORPORATED

Balance Sheet as of Close of Business April 30, 1941

## CURRENT ASSETS

Account No.	Account name	Amount	Amount
1000	Cash		\$43,614.33
1020	Working funds		47,425.00
1040	Special deposits		14,449.56
1060	Notes receivable	\$330.00	
1100	Receivables from associated companies	94,329.28	
1120	Accounts receivable	321,311.94	
	Less: Reserve for uncollectible accounts	16,118.41	
			399,852.81
1140	Subscribers to capital stock		4,955.30
1180	Material and supplies		113,667.18
	Total Current Assets		623,964.18
TANGIBLE PROPERTY			
1200	Carrier operating property	1,927,524.83	
	Less: Reserve for depreciation and amortization	523,698.21	
			1,401,828.62
	Total Tangible Property		1,401,828.62

## Balance Sheet as of Close of Business April 30, 1941—Continued

## CURRENT ASSETS—continued

Account No.	Account name	Amount	Amount
<b>INTANGIBLE PROPERTY</b>			
1500	Organization, franchises and permits.....	\$2,808.11	
	Less: Reserve for amortization.....		\$2,808.11
1550	Other intangible property.....	2,201.00	
	Less: Reserve for amortization.....		2,201.00
	<b>Total Intangible Property.....</b>		<b>5,009.11</b>
<b>INVESTMENT SECURITIES AND ADVANCES</b>			
1650	Other investments and advances.....		
	(a) Pledged.....	17,688.44	17,688.44
	<b>Total Investment Securities and Advances.....</b>		<b>17,688.44</b>
<b>DEFERRED DEBITS</b>			
1800	Prepayments.....		69,978.18
1890	Other deferred debits.....		3,855.95
	<b>Total Deferred Debits.....</b>		<b>73,834.13</b>
	<b>Total Assets.....</b>		<b>2,122,324.48</b>

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## CURRENT LIABILITIES

2000	Notes Payable.....		39,728.42
2030	Payables to Associated Companies.....		183,930.17
2050	Accounts Payable.....		125,726.92
2070	Wages Payable.....		44,289.95
2120	Taxes Accrued.....		44,797.83
2150	Interest Accrued.....		130.00
2190	Other Current Liabilities.....		4,387.86
	<b>Total Current Liabilities.....</b>		<b>442,901.25</b>
<b>RESERVES</b>			
2680	Injuries, Loss, and Damage Reserves.....		11,929.51
2690	Other Reserves.....		152,634.64
	<b>Total Reserves.....</b>		<b>164,564.15</b>
<b>CAPITAL STOCK</b>			
2700	Preferred Capital Stock.....	53,320.00	
	Nominally Issued.....		53,320.00
2710	Common Capital Stock.....	212,080.00	
	Nominally Issued.....		212,080.00
2720	Premiums and Assessments on Capital Stock.....		10,000.00
2730	Capital Stock Subscribed.....		5,520.00
	<b>Total Capital Stock.....</b>		<b>280,920.00</b>
<b>UNAPPROPRIATED SURPLUS</b>			
2900	Unearned Surplus.....		
2950	Earned Surplus.....		1,233,849.08
	<b>Total Unappropriated Surplus.....</b>		<b>1,233,849.08</b>
	<b>Total Liabilities.....</b>		<b>2,122,324.48</b>

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## EXHIBIT D

First Parties represent and warrant that the following is a true and accurate statement of the operating revenues and profit and loss of the company named on Exhibit A annexed hereto for the year ending April 30, 1941, as per the books of said company, and has been prepared in accordance with Interstate Commerce Commission practice and procedure:

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## EXHIBIT D

## HORTON MOTOR LINES, INCORPORATED

## Income Statement, Year Ended April 30, 1941

Account No.	Name of Account	Amount
<b>I. CARRIER OPERATING INCOME</b>		
3000	Revenues: Operating Revenues.....	\$4,716,637.83
Expenses:		
4000	Operation and Maintenance Expenses.....	3,362,906.44
5000	Depreciation Expense.....	249,987.72
5200	Operating Taxes and Licenses.....	424,857.54
5300	Operating Rents—Net.....	157,338.68
	Total Expenses.....	4,195,090.38
	Net Operating Revenue.....	521,547.45
5500	Income from Lease of Carrier Property, Credit.....	119.89
	Net Carrier Operating Income.....	119.89
<b>II. OTHER INCOME</b>		
6200	Interest Income.....	895.70
6300	Other Nonoperating Income.....	652.02
	Total Other Income.....	1,557.72
	Gross Income.....	523,225.06
<b>III. INCOME DEDUCTIONS</b>		
7100	Other Interest Deductions.....	1,965.07
7300	Other Deductions.....	16,134.32
	Total Income Deductions.....	18,099.39
	Net Income Before Income Taxes.....	505,125.67
8000	Provision for Income Taxes.....	141,435.19
	Net Income (or loss) Transferred to Earned Surplus.....	363,690.48

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## EXHIBIT E

First Parties represent and warrant that there are listed below a true, accurate, and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement, of all encumbrances and liens thereon, and of all real estate leased by said company, showing the location, monthly rentals, expiration dates, and other details with regard to such leased premises:

## HORTON MOTOR LINES, INCORPORATED

## Schedule of Leases—April 30, 1941

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MCLEAN TRUCKING CO., INC., ET AL.

Location	Street address	Lessor	Address of lessor	Monthly rental	Date of expiration
New York, N. Y.	623 Washington St.	Hoffman Estate	258 Broadway, N. Y. C.	\$1,933.33	1-31-47
Philadelphia, Pa.	1701 N. Delaware Ave.	Conger Realty Co.	Charlotte, N. C.	1,800.00	10-15-44
Baltimore, Md.	2101 Washington Blvd.	Conger Realty Co.	Charlotte, N. C.	1,900.00	8-31-43
Pittsburgh, Pa.	219 Duquesne St., Northside	Conger Realty Co.	Charlotte, N. C.	1,900.00	8-12-43
Pittsburgh, Pa.	206-8-10 W. General Robinson St.	Wilmerding Corp. of Pa.	Wilmerding, Pa.	10.00	Month to month
Wilkes-Barre, Pa.	121-131 Welles St.	Matherson-Whee. Co.	Wilkes-Barre, Pa.	300.00	11-18-42
Washington, D. C.	701 I St. SW.	Clarence & Jas. W. Springman	Washington, D. C.	100.00	8-31-41
Richmond, Va.	2403 5-7 N. Lombardy St.	Carrie L. Walker	Richmond, Va.	315.00	12-14-42
Greensboro, N. C.	2110 High Point Rd.	McDaniel Lewis et al.	Greensboro, N. C.	310.00	Month to month
Charlotte, N. C.	1001-31 S. Clarkson St.	Conger Realty Co.	Charlotte, N. C.	2,500.00	8-31-43
Charlotte, N. C.	1004-18 S. Clarkson St.	Conger Realty Co.	Charlotte, N. C.	750.00	1-1-45
Greenville, S. C.	741 W. Washington St.	J. P. Thompson et al.	Greenville, S. C.	400.00	4-25-42
Hickory, N. C.	8th Avenue	Harper Motor Co.	Hickory, N. C.	50.00	Month to month
Shelby, N. C.	415 S. Morgan St.	W. G. Arcey	Shelby, N. C.	50.00	Month to month
Atlanta, Ga.	172 Howell St. N. E.	Conger Realty Co.	Charlotte, N. C.	1,400.00	8-30-44
Rome, Ga.	1424 N. Broad St.	O. D. Minge	Rome, Ga.	75.00	8-31-41
Avalon, N. J.		L. W. Schiller Realty Company	North Amboy, N. J.	125.00	2-15-43

1 Remarks: Option of renewal for additional 5 years on same terms.

2 Remarks: Option of renewal for additional 5 years on same terms.

3 Remarks: Option of renewal for additional 5 years on same terms.

4 Remarks: Option of renewal for 5 years on same terms.

5 Remarks: Option of renewal for 5 years on same terms.

6 Remarks: Lease is automatically renewed for 1 year at a time in absence of 90 days' written notice.

7 Remarks: Option to renew for 5 years on same terms.

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## EXHIBIT F

First Parties represent and warrant that the following is a true and complete list of all executory contracts, including but not limited to employment contracts, to which the company named on Exhibit A annexed hereto is a party, and which are in existence at the date of this agreement, and that said company has no other such contracts, except such as have been made in the ordinary course of business of the company and as are necessary or useful in the conduct of its business. First Parties further represent and warrant that all of the contracts listed thereon are considered advantageous to said company and are not unduly burdensome.

First Parties agree as to any contracts set forth below, which are identified by the word "out" and initialed by the designee of First Parties, and Second Party, that such contract will be eliminated as an obligation of said company on or before the closing date fixed in the annexed agreement.

## HORTON MOTOR LINES, INCORPORATED

1. Employment contract with S. W. Shelton, Richmond, Virginia, for \$5,400.00 per annum. A year's notice is necessary to cancel so that Contract is in force a year from any date cancellation may be made. Mr. Shelton represents Horton Motor Lines, Incorporated, in capacity of Public Relations Counsel.

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## EXHIBIT G

First Parties represent and warrant that the following is an accurate and complete statement of the insurance coverage of each kind that exists with respect to the company named on Exhibit A annexed hereto as of the date of this agreement, showing the amount and kind of coverage, the names of the insurance companies, expiration dates of insurance policies and premiums thereon.

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## HORTON MOTOR LINES, INCORPORATED

## Insurance Schedule—April 30, 1941

Insurance company	Type of coverage	Amount of coverage	Expiration date	Original premium
Equitable	Fire, etc	\$7,500.00	10-21-41	\$125.62
Aetna	Fire, etc	\$10,000.00	10-21-41	167.50
Equitable	Fire, etc	\$100,000.00	1-1-42	87.00
Dixie	Fire, etc	\$15,000.00	2-15-42	66.00
Hartford	Fire, etc	\$10,000.00	3-6-42	44.00
Equitable	Fire, etc	\$2,000.00	8-9-41	8.00
Phoenix	Fire, etc	\$2,000.00	8-9-41	93.00
Equitable	Fire, etc	\$350,000.00	1-1-42	740.00
Equitable	Fire, etc	\$375,000.00	1-1-42	600.00
Hartford	Fire, etc	\$32,500.00	11-7-41	358.48

## Insurance Schedule—April 30, 1941—Continued

Insurance company	Type of coverage	Amount of coverage	Expiration date	Original premium
Hartford	Auto Fleet	\$1,256,000.00	9-1-41	\$13,187.67
265 Maryland Casualty	P. L. & P. D.	25/50/5	1-26-42	31.48
Maryland Casualty	P. L. & P. D.	25/50/5	1-16-42	15.36
Maryland Casualty	P. L. & P. D.	25/50/5	2-3-42	18.06
Maryland Casualty	P. L. & P. D.	10/20/5	2-27-42	13.06
Maryland Casualty	P. L. & P. D.	25/50/5	4-13-42	14.18
Maryland Casualty	P. L. & P. D.	10/20/5	5-1-41	11.48
Maryland Casualty	P. L. & P. D.	50/100/5	7-27-41	14.98
Maryland Casualty	P. L. & P. D.	25/50/5	3-28-42	33.30
Maryland Casualty	P. L. & P. D.	10/20/5	6-3-41	13.06
Maryland Casualty	P. L. & P. D.	25/50/5	6-1-41	16.12
Maryland Casualty	P. L. & P. D.	25/50/5	6-1-41	14.18
U. S. Casualty	Public Liability	25/50	6-18-41	71.10
Maryland Casualty	P. L. & P. D.	25/50/5	7-13-41	14.18
Maryland Casualty	P. L. & P. D.	25/50/5	8-17-41	18.06
Maryland Casualty	P. L. & P. D.	25/50/5	8-22-41	12.49
Maryland Casualty	P. L. & P. D.	25/50/5	8-7-41	15.36
Maryland Casualty	P. L. & P. D.	10/20/5	8-23-41	11.53
266 Maryland Casualty	P. L. & P. D.	10/20/5	8-1-41	14.18
Maryland Casualty	P. L. & P. D.	50/100/5	9-1-41	11.21
Maryland Casualty	P. L. & P. D.	10/20/5	9-12-41	14.18
Maryland Casualty	P. L. & P. D.	10/20/5	9-7-41	13.06
Amer. Fidel. & Cas.	P. L. & P. D.	25/50/5	9-1-41	490.93
Maryland Casualty	P. L. & P. D.	25/50/5	9-26-41	18.06
Mary and Casualty	P. L. & P. D.	25/50/5	10-8-41	15.36
Maryland Casualty	P. L. & P. D.	25/50/5	9-1-41	752.57
Maryland Casualty	P. L. & P. D.	25/50/5	12-31-41	18.06
Maryland Casualty	P. L. & P. D.	25/50/5	12-31-41	28.47
Market Service, Inc.	P. L. & P. D.	25/50	None	
Excess Insur. Co. of Amer.	P. L. & P. D.	50/100/5	9-1-41	538.36
267 Maryland Casualty	Spkr. Leakage	\$25,000.00	9-1-41	252.74
Equitable	Spkr. Leakage	\$25,000.00	9-1-41	253.81
Continental	Boiler	\$20,000.00	2-9-43	790.90
Maryland Casualty	Spkr. Leakage	\$25,000.00	1-1-44	187.50
Equitable	Elevator	25/50	3-10-42	10.00
Maryland Casualty	Forgery Bond	\$15,000.00	3-10-43	172.78
Maryland Casualty	Paymaster Robbery	\$37,497.00	4-1-42	173.73
Maryland Casualty	Safe Burglary	\$23,555.00	4-1-42	274.08
Maryland Casualty	Mess. & Int. Rep.	\$41,666.00	4-1-42	190.93
Equitable	Spkr. Leakage	\$30,000.00	5-4-41	125.30
Equitable	Water Damage	\$50,000.00	7-12-41	500.00
Equitable	Spkr. Leakage	\$135,000.00	8-12-41	675.82
Maryland Casualty	Carriers Bond	\$25,000.00	8-28-41	125.00
Maryland Casualty	Burglary	\$100,000.00	4-1-42	374.00
U. S. Casualty	Trans. Bond	\$1,000.00	9-25-44	10.00
268 F. & D. of Md.	Trans. Bond	\$1,000.00	9-22-41	20.00
Maryland Casualty	Fidelity Bond	\$298,500.00	9-1-41	840.51
Maryland Casualty	Elevator	25/50	9-1-41	42.18
Hartford	Spkr. Leakage	\$2,800.00	8-1-42	5.29
Maryland Casualty	Trans. Bond	\$5,000.00	7-19-41	50.00
269 Gen'l. Reinsurance Company	Excess Wkmen's Comp	State requirement	9-1-41	1,407.00
State of Ohio	Wkmen's Comp	State requirement	10-4-41	7.18
Maryland Casualty	Wkmen's Comp	State requirement	9-1-41	Monthly
270 Alliance	Excess Transit Floater	\$10,000.00	3-29-42	75.00
Globe & Rutgers	Excess Transit Floater	\$10,000.00	7-29-42	75.00
Equitable	Legal Liability	\$10,000.00	7-1-41	350.00
Equitable	Cargo, L. & D.	\$42,500.00	None	
271 Jefferson Standard Life Insurance Co.	Life of President	\$250,000.00		1,468.00
Jefferson Standard Life Insurance Co.	Life of Vice-Pres.	\$30,000.00		2,039.00
Jefferson Standard Life Insurance Co.	Life of Sec.-Treas.	\$30,000.00		1,810.00
Mutual Life Insur. Company of N. Y.	Life of President	\$30,000.00		2,079.00
Life Insurance Co. of Virginia	Life of Vice-Pres.	\$30,000.00		657.00
Life Insurance Co. of Virginia	Life of Insur. Mgr.	\$30,000.00		1,462.00

<sup>1</sup> Premiums on these policies are paid in monthly installments based on a rate of .0036 and .000559 per mile traveled by revenue equipment per month.

<sup>2</sup> Premiums on this policy are paid in monthly installments based on a rate of 2 1/2¢ per \$100.00 of Gross Revenue. Deductibles: \$10,000.00 loss on vehicles; \$2,500.00 loss on hired vehicles; \$2,500.00 loss in terminals.

<sup>3</sup> Premiums shown on this coverage are on quarterly basis, whereas others are on annual basis.

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## EXHIBIT H

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto, nor is any such action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises or privileges null and void.

Mrs. J. Sanford, \$350.00.

All Claims and demands not listed are covered by insurance.

There is on file a protest as to the operating rights of the company between Baltimore and Pittsburgh.

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## EXHIBIT I

First Parties represent, warrant and agree that all items listed below were actually expended by or became accrued liabilities of the company named on Exhibit A annexed hereto during the twelve months' period ending April 30, 1941, and that as to the items below under the column "Non-recurring items," neither said items nor any items similar or corresponding thereto will be or become, in whole or in part, obligations of said company at any time after the closing date of this agreement.

In consideration of the foregoing representations, warranties and agreements, it is agreed that in determining the amount of common stock of Second Party to be received by First Parties under subdivision (2) of paragraph Third of this agreement, the sum of \$48,235.00 shall be added to the adjusted net profits of said company as determined by Harry J. Reicher, less provision for taxes at the 1940 rates on the said sum of \$48,235.00.

## Nonrecurring Items:

1. Bonuses	\$6,000.00
2. Extraordinary legal fees	4,235.00
3. Salary to H. D. Horton	38,000.00

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## EXHIBIT J

First Parties represent and warrant that there is a class of preferred stock of the company named on Exhibit A annexed hereto called "Employees 8% Preferred Stock", and that of a total of 10,000 shares of such class authorized, there are presently issued and outstanding 2,666 shares having a par value of \$20.00 each.

Notwithstanding the provisions of paragraph Sixth, it is agreed that the continued payment of dividends on this stock shall not operate to decrease the net worth of the company, and it is further agreed that the said company may continue the issuance of the Employees Preferred Stock in accordance with its present practice and routine; and First Parties represent, warrant and agree that any stock so issued shall, along with all of said stock heretofore issued, be called and redeemed on or before the closing date as defined in the main agreement.

First Parties further represent and warrant that the balance sheet of April 30, 1941, to be delivered to Harry J. Reicher & Company under the provisions of paragraph Third of the annexed contract will be adjusted to reflect the situation which would have resulted if all of the issued and outstanding preferred stock above described had been called and the redemption price thereof had been paid prior to April 30, 1941.

First Parties represent, warrant and agree that the shares of common stock of the company named on Exhibit A presently held by the American Trust Company, as Trustee, and included in the number of shares set forth in Column 3 on Exhibit A next to the name H. D. Horton, will be delivered to Second Party on demand hereafter, or, in any event, before the closing date as defined in the main agreement, it being understood and agreed that the said trust agreement, under which said stock is now held, will in the meantime be revoked in full and it is also agreed that the policies of life insurance upon the life of H. D. Horton, held by the said American Trust Company, as Trustee, in connection with the trust agreement, under which said common shares of stock are held, will be transferred and assigned to H. D. Horton and that as a consideration therefor he will pay over to Horton Motor Lines, Incorporated, a sum equivalent to the asset value thereof, as shown on the books of said company; the policies of insurance referred to being Numbers 521417, 521418, and 521419 and executed by the Jefferson Standard Life Insurance Company.

H. D. Horton represents that he is the beneficial owner and presently the holder of the shares of stock listed on Exhibit A under the name of B. L. Frazier, J. D. Lawson, M. B. Speir, Jr., J. N. Johnson, and J. B. Evans.

The word "modified" as used in the concluding paragraph of paragraph Sixth of the annexed agreement shall be deemed to mean "waived in whole or in part".

The expression "main body of this agreement" in each of the two places where said expression appears in paragraph Sixteenth of the annexed agreement is deemed to include any exhibit or exhibits.

275 It is understood that B. M. Seymour has executed or is about to execute a subscription agreement for certain shares of the common stock of Second Party.

276 **HORTON MOTOR LINES, INCORPORATED**

The undersigned hereby certify:

(1) That the undersigned have examined contracts delivered simultaneously herewith between Associated Transport, Inc. and stockholders of the following companies:

Horton Motor Lines, Incorporated,

Consolidated Motor Lines, Incorporated,

Barnwell Brothers, Incorporated,

McCarthy Freight System, Inc.,

M. Moran Transportation Lines, Inc.,

Southeastern Motor Lines, Incorporated,

The Transportation, Inc.,

Southern New England Terminals, Inc.,

Barnwell Warehouse & Brokerage Company,

Conger Realty Company,

Brown Equipment and Manufacturing Company;

(2) That the form and substance of the within agreement (being one of the agreements referred to in paragraph (1) hereof), and of each of the other aforesaid agreements are satisfactory;

(3) That in the opinion of each of the undersigned a sufficient number of shares of stock is represented by the stockholders signing each such agreement;

(4) That this agreement and the other aforesaid agreements have been executed and delivered by stockholders of a sufficient number of and a satisfactory combination of the companies listed in paragraph Fourteenth of the annexed agreement.

Dated: June 11th, 1941.

H. D. HORTON,

EVERETT J. ARBOUR,

R. W. BARNWELL,

VIRGIL R. GOODE,

CLIFFORD C. BROCK,

A. S. CLAY,

JOHN J. MCCARTHY,

MORTIMER ALLEN SULLIVAN.

277 Agreement made this            day of 1941, between the parties who may sign this agreement as First Parties, hereinafter referred to as the "First Parties," Associated Transport, Inc., a Delaware corporation, hereinafter referred to as the "Second Party," and Burge M. Seymour, hereinafter referred to as the "Third Party," witnesseth:

The First Parties are about to purchase from the Second Party certain shares of the common stock of the Second Party, at a price of \$1 a share payable in cash, pursuant to paragraphs designated "Fifth" of certain contracts entered into by certain of the First Parties respectively (with or without other parties) and the Second Party; and the Third Party is about to purchase from the Second Party certain shares of its common stock at a price of \$1 per share on terms to be agreed upon between the Second Party and the Third Party.

It is desired to restrict for a reasonable period of time the transfer by the First and Third Parties of the stock so to be acquired by them respectively.

Now, therefore, in consideration of the mutual promises of the parties hereinafter contained, it is agreed:

First: Each of the First Parties, and the Third Party, each for himself, agrees that he will not for a period of thirty months from the date of this agreement sell, transfer, assign, encumber or otherwise dispose of the stock to be acquired by him from the Second Party as aforesaid, except as herein-after expressly permitted.

Second: Notwithstanding the provisions of paragraph "First" of this agreement, any of the First Parties may transfer any part or all of the stock so acquired by him, subject to the following limitations:

A. Any such transfer may be made only to one or more officers or employees of the corporation named in Schedule A of the agreement with the Second Party to which the First Party making the transfer is a party.

B. No such transfer may be made for any consideration greater than \$1 a share.

C. Any such transfer must be made and shall be accepted subject to the restrictions of this agreement, so that the transferee shall be subject to the same restrictions under this agreement as if the transfer had not been made and, in addition, to the restriction stated in subdivision "D" of this paragraph "Second."

D. With regard to each share of stock, only a single transfer shall be permitted under the provisions of this paragraph "Second"; so that when one transfer of any stock shall have been made under this paragraph "Second," no further transfer of the same stock shall be permitted thereunder.

Third: All of the stock hereinbefore referred to, issued to the First and Third Parties, shall bear an endorsement referring to this agreement, and stating in substance that the transfer of the stock is restricted in accordance with the terms

thereof and may validly be made only in accordance with said terms.

Fifth This agreement may be signed in several counterparts, which shall be deemed one instrument.

In witness whereof, the individual parties have affixed their hands and seals, and the corporate parties have caused these presents to be duly executed under seal, the day and year first above written.

H. D. HORTON, [LS]  
HENRY CLAY HORTON, [LS]  
By H. D. HORTON, [LS]

*Attorney in Fact*

MRS. H. D. HORTON, [LS]  
BENJAMIN STEVENS HORTON, [LS]

*First Parties.*

ASSOCIATED TRANSPORT, INC.

By B. M. SEYMOUR, [LS]

*President,  
Second Party.*

Attest:

A. D. RYAN,  
*Secretary.*

B. M. SEYMOUR, [LS]  
Burge M. Seymour,  
*Third Party.*

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EXHIBIT BMC-45-C-1a

Agreement made this 11th day of June 1941, between H. D. Horton, Charlotte, N. C.; R. G. Conger, Charlotte, N. C.; C. P. Roberson, Charlotte, N. C.; hereinafter referred to as "First Parties," and Associated Transport, Inc., a Delaware corporation, hereinafter referred to as "Second Party," witnesseth:

Substantial economies and increased efficiency can be accomplished by combining the ownership and control of the stock and/or assets of certain motor carriers of freight now operating along the Atlantic seaboard, and said combined ownership and control would result in improved motor freight movement favorably affecting the shipping public, would promote safe and sound economic conditions in transportation and would aid and contribute to the progress of the national defense program.

Such combined ownership and control is a joint enterprise to carry out a plan of reorganization, and Second Party is prepared to act as the agency for accomplishing said combination of ownership and control and said plan of reorganization;

282 The First Parties or some of them, or with others, have this day executed an agreement for the sale of all of the capital stock of Horton Motor Lines, Incorporated, said agreement being hereinafter referred to as the main agreement.

Now, therefore, in consideration of the mutual promises of the parties hereinafter contained, it is agreed:

First: The representations and warranties made by First Parties on Exhibits A to J hereto annexed are made part of this agreement and incorporated herein by reference.

First Parties represent and warrant that the books and records of the company named on Exhibit A hereto annexed, truthfully, accurately, and completely contain all of the information necessary to disclose the correct financial condition of said company as of April 30, 1941, and to disclose the correct net profits of said company for the twelve months' period ending April 30, 1941.

Second: Second Party represents and warrants (1) that it has no interest, direct or indirect, in any motor, rail, or water carrier whether operating or nonoperating, either as a stockholder or by means of a holding or investment company or companies, voting trust or trusts, or in any other manner, other than that which results from the agreements which are to be executed simultaneously herewith as provided in paragraph Fourteenth of the main agreement; (2) that it has no subsidiaries or affiliates and has incurred no liabilities of any nature, except for compensation for services, for expenses in connection with its organization, for legal fees in connection with the preparation of this agreement and the agreements which are to be executed simultaneously herewith as provided in paragraph Fourteenth of the main agreement, and for the effectuation or attempted effectuation of the purposes thereof; (3) that Second Party is a validly organized Delaware corporation, that its directors at this time are H. R. Horton, and B. M. Seymour, and its officers are:

283 Chairman of the Board, H. D. Horton; President, Burge M. Seymour; Vice President, Office vacant; Secretary, B. D. Ryan; Treasurer, Burge M. Seymour; that the only issued and outstanding stock of Second Party is 1,000 shares of common stock owned on the books of Second Party by H. D. Horton, and that said shares of stock are fully paid; (4) that the charter of Second Party and the amendments thereto are as filed in the office of the Secretary of State of Delaware, that no amendments to said charter have been filed subsequent to May 26, 1941, and that the authorized stock, the classes, preferences and rights thereof are as set forth in said charter and amendments; (5) that there are no agreements, either written or oral, concerning the sale, transfer, or other disposition of the authorized and unis-

sued stock of Second Party, except such agreements as are to be executed simultaneously herewith as provided in paragraph Fourteenth of the main agreement.

Third: Each of the First Parties agrees to exchange all of the issued and outstanding capital stock shown on Exhibit A annexed hereto to be owned by him in the company named on said Exhibit, for the 6% cumulative convertible \$100 par value preferred stock, and for the \$1 par value common stock of Second  
284 Party (all of the said stock of Second Party to be fully paid and non-assessable, free and clear of any and all liens and encumbrances whatsoever), the number of each class of said shares which First Parties collectively shall receive, to be arrived at as follows:

(1) The number of preferred shares to be received by First Parties shall be such as to give said First Parties collectively a total par value of preferred shares equal to four-fifths of the net worth, as determined in the manner hereinafter provided, of the company named on Exhibit A annexed hereto as at April 30, 1941.

(2) The number of common shares to be received by First Parties shall be such as to give said First Parties collectively a total par value of common shares to be arrived at by deducting from the net profits, determined in the manner hereinafter provided, of the company named on Exhibit A for the twelve months ending April 30, 1941, a sum equal to 6% of the par value of the preferred shares to be received by First Parties collectively under subdivision (1) of this paragraph Third, and by dividing the remainder by 2.

First Parties agree to furnish to Harry J. Reicher & Company, certified public accountants of the State of New York, with offices in New York City, no later than May 31, 1941, a balance sheet of the company named on Exhibit A as of April 30, 1941, and an operating statement of said company for the twelve months' period ending April 30, 1941.

Net worth, for the purposes of subdivision (1) of this paragraph Third, and net profits for the purposes of subdivision (2) hereof, shall be determined as follows: The net worth and net profits of said company as shown on the above mentioned balance sheet and operating statement shall be adjusted without consolidation by Harry J. Reicher of Harry J. Reicher & Company in the following items and respects:

285 (a) All values for good-will, franchises, costs of acquiring franchises, organization expenses, and such deferred expenses as are not in his opinion apportionable on an accurate mathematical basis, shall be eliminated and disregarded.

(b) Real estate shall be taken at cost less depreciation at the rate specified below.

(c) Provision shall be made for taxes for the twelve months' period ending April 30, 1941, on the basis of 1940 rates.

(d) An inventory of tires on equipment shall be taken at the beginning and end of the twelve months' period ending April 30, 1941, and computed at 50% of cost.

(e) The reserve for uncollectible accounts receivable shall be 5% of such accounts, or the average actual annual loss of said company on such accounts for the three years ending December 31, 1940, whichever is greater, and said reserve shall be established both at the beginning and end of said twelve months' period.

(f) The following annual depreciation rates shall be applied to the types of assets enumerated below:

(i) Furniture, fixtures, and other equipment, 8%.

(ii) Brick or concrete buildings owned in fee, 2%.

(iii) Leasehold improvements, excluding buildings—Rate to be determined by the term of the lease not taking into account any options for renewal.

(iv) Buildings constructed on leased property—Rate to be determined by the term of the lease, taking options for renewal, if any, into consideration, but in no event lower than the rate provided in subdivisions (ii) or (v) hereof.

(v) Other buildings—Fair rate to be fixed in his discretion within the limits, if any, set by the Treasury Department.

286 (vi) Trucks—none.

(vii) Trailers—None.

(viii) Tractors—None.

(ix) Passenger cars—33 $\frac{1}{3}$ %.

(x) Service cars—25%.

Depreciation with respect to any of the items from (vi) to (x) hereof inclusive, shall cease when 95% of the cost of any said item has been depreciated.

(g) Any net profits or losses arising out of entries made by the company named on Exhibit A during the twelve months' period ending April 30, 1941, adjusting assets or liabilities or inventories on parts, tires, supplies, stationery, gas and oil, shall be charged or credited directly to surplus, unless the amount allocable to said twelve months' period can be determined. If the amount allocable to said twelve months' period can be determined it shall be treated as a profit or loss for said twelve months.

(h) If any item for rebuilding or maintenance of revenue equipment has been capitalized by the company named on Exhibit A while the book value of said equipment is more than 20% of its original cost, the amount so capitalized shall be eliminated, except that any expenditures for completion of ve-

hicles made during the first sixty days of ownership may be capitalized.

(i) Such adjustment, as in his opinion may seem proper, shall be made by him in any respect where a principle or method of accounting has been used or applied by said company which is not, in his opinion, in accord with sound accounting principles or methods, except that nothing herein contained shall authorize adjustments inconsistent with or different from those provided in items (a) to (h) hereof inclusive where those items are applicable, nor authorize any adjustment in connection with any compensation for services item.

(j) To correct any inaccuracies or discrepancies whatsoever.

In all cases where reserves are set up or adjusted, the rate or method applied at April 30, 1941, shall likewise be applied at May 1, 1940, to determine the correct allocation of profits or losses between the said twelve months' period and prior periods.

287 It is expressly understood and agreed that for the purpose of determining the number of shares of preferred stock to be received by First Parties collectively, the following method shall be followed: Harry J. Reicher shall first determine the net worth of the company named on Exhibit A as adjusted in all respects described in subdivisions (a) to (e) and (g) to (j) hereof all inclusive. He shall then determine whether the adjustments provided for in subdivision (f) result in a net increase or net decrease in value of the items affected thereby.

If the adjustments under subdivision (f) result in a net increase in said values, the amount of said increase shall not entitle First Parties to any shares of preferred stock therefor, but they shall receive therefor a total par value of common shares equal to 5% or four-fifths of the amount of said increase.

If the adjustments under subdivision (f) result in a net decrease in said value, the amount of said decrease shall be deducted from the net worth of said company as adjusted in all respects described in subdivision (a) to (e) and (g) to (j) hereof all inclusive.

It is further understood and agreed that all determinations by Harry J. Reicher under the provisions of this paragraph Third, shall be binding and conclusive on all parties hereto, unless within fifteen days after mailing of said determinations by Harry J. Reicher to the designee provided for in the main agreement, said designee shall mail to all of the designees under the contracts described in paragraph Fourteenth of the main agreement, at the addresses set forth in their respective contracts, notice that he

288 disputes said determinations, or any of them, with a statement of his reasons therefor, and unless two-thirds of all said designees, including the one provided for in the main

agreement, shall revise the determinations, or any of them, made by Harry J. Reicher and mail notice of their action to the designee provided for in the main agreement. Should at least two-thirds of said designees fail to meet, hear and reach a vote upon such disputed determinations within fifteen days after such notice of dispute is mailed to them, performance of this agreement shall, upon the written election of First Parties, be suspended until at least two-thirds of said designees shall have met, heard the dispute with regard to such determinations and reached a vote thereon; but all determinations by Harry J. Reicher shall remain in force unless upon such vote it is revised by the vote of two-thirds of all said designees, including the one provided for in the main agreement. If such determinations, or any of them, are revised by two-thirds of said designees, such revision shall, insofar as it affects and with respect to the items so affected, supersede his determinations and shall be final, binding and conclusive on all parties, unless within ten days after such revision, the designee provided for in the main agreement shall elect to accept the original determinations by Harry J. Reicher, in which event said original determinations shall be final, binding and conclusive on all parties.

Fourth: It is agreed that each of First Parties or their respective nominees shall receive that percentage of the total number of shares of each class of stock of Second Party to be received by all of the First Parties to this agreement collectively, which is shown opposite his name in columns 4 and 5 on Exhibit A. In determining the amount of common or preferred stock to be received by First Parties either collectively or by any of them, a fractional share of one-half or over shall entitle such First Parties to a full share, and a fractional share of less than one-half is hereby waived by each of said First Parties.

289 Fifth: For the purpose of providing for obligations incurred or to be incurred by Second Party in connection with bringing about or attempting to bring about the combined ownership and control and reorganization contemplated hereby, each of the First Parties agrees to purchase or cause to be purchased at par, that percentage of 862 shares of the common stock of Second Party which is set forth next to his name in column 5 on Exhibit A, such stock to be paid for in cash at the time of the execution hereof. Second Party agrees to sell said shares of stock to First Parties, and agrees that such shares shall be nonassessable and free and clear of all liens and encumbrances.

Sixth: First Parties warrant and agree that between April 30, 1941, and the closing date as hereinafter fixed, or the time of cancellation of this agreement in the manner hereinafter provided:

(1) No equipment or other assets of the company named on Exhibit A hereof has been or will be sold, exchanged, or otherwise disposed of, except in the ordinary course of business, and the equipment, assets, and facilities of said companies have been and will be maintained continuously during said period in accordance with existing standards of maintenance.

(2) Neither the company named on Exhibit A, nor First Parties acting or purporting to act on its behalf, has or will purchase, lease, or build, or make any commitment to purchase, lease, or build, any property except in the ordinary course of business and for a reasonable consideration in the light of prevailing markets, and said company has not and will not incur any expenses or liabilities except in the ordinary course of business and for a reasonable consideration in the light of prevailing markets.

(3) No stockholder or officer of the company named on Exhibit A has received or shall receive any greater compensation or expense allowance (as distinguished from actual expenses) than the total of his compensation and expense allowance for the twelve months' period ending April 30, 1941, prorated in accordance with the time elapsed between April 30, 1941, and the closing date hereof, or the cancellation hereof, in the manner hereinafter provided. No compensation or expense allowance agreement extending beyond the closing date hereof has been or will be made with any stockholder, officer, or executive employee of said company.

(4) Insurance coverage in at least the amount and kind set forth on Exhibit G annexed hereto, will be continuously maintained in force and effect.

(5) Neither the company named on Exhibit A, nor First Parties acting or purporting to act on its behalf, has or will acquire any interest, direct or indirect, in any motor carrier or any rail or water carrier, except the company named on Exhibit A of the main agreement.

(6) The company named on Exhibit A has not and will not authorize the creation of any bonded indebtedness, secured or unsecured.

(7) Any sale, hypothecation, or transfer by any of First Parties of his stock in the company named on Exhibit A shall be expressly subject to all the terms, conditions, and provisions of this agreement.

(8) There have been and will be no changes in the charter or bylaws of the company set forth on Exhibit A.

(9) No stock shown on Exhibit A to be authorized but unissued shall be issued.

(10) No dividends have been or will be declared or paid by the company named on Exhibit A.

(11) No distribution from assets will be made by the company named on Exhibit A except in the usual course of business and except as expressly authorized by this contract.

It is understood and agreed that on or after June 1, 1941, any one or all of the provisions contained in this paragraph Sixth may be modified by written agreement between Second Party and two-thirds of all designees provided for in the contracts described in paragraph Fourteenth of the main agreement including the designee provided for in the main agreement.

Seventh: Second Party warrants and agrees that it will not, prior to the closing date as hereinafter fixed or the time of cancellation of this agreement in the manner hereinafter provided:

291 (a) Amend or modify its charter or bylaws.

(b) Consolidate or merge with any other company, or sell, lease, or mortgage all or substantially all of its assets.

(c) Create any bonded indebtedness, secured or unsecured.

(d) Create or issue any different class of stock than those described in this agreement.

(e) Issue any shares of any of the authorized classes of its stock in addition to those already issued and those which may be issued pursuant to paragraphs Third and Fifth of this agreement, and pursuant to the main agreement, and pursuant to the corresponding paragraphs of the agreements which are to be executed simultaneously therewith as provided in paragraph Fourteenth thereof.

It is understood and agreed that any one or all of the provisions contained in this paragraph Seventh may be modified by written agreement between Second Party and two-thirds of all designees provided for in the contracts described in paragraph Fourteenth of the main agreement including the designee provided for in the main agreement.

Eighth: First Parties further agree that all books, papers, and records, both corporate and financial, of the company listed on Exhibit A shall be open to and available for inspection by Second Party and/or by Harry J. Reicher & Company between the date hereof and the closing date as hereinafter fixed, or the cancellation hereof in the manner hereinafter provided, and First Parties further agree that during the same period Second Party and/or Harry J. Reicher & Company may make such inspection of the corporate and financial books, papers, records and property of said company as may be desired by Second Party and/or Harry J. Reicher & Company in securing information as to and in

verifying the representations, warranties, and undertakings contained in this agreement.

292 Ninth: Second Party agrees to defray all auditing expenses incurred in connection with the work to be done by Harry J. Reicher & Company, under paragraph Third hereof.

Tenth: Within sixty days after execution and delivery of this agreement, each of First Parties agrees to deliver to and deposit with the designee provided for in the main agreement all of the shares of stock shown on Exhibit A annexed hereto to be owned by him in the company named on said Exhibit. The certificates of stock so delivered shall be endorsed in blank or accompanied by stock powers running to Second Party with signatures guaranteed by a member bank of the Federal Reserve System, or a member of the New York Stock Exchange, and shall be accompanied by the required stock transfer stamps or cash equal to the cost thereof.

Within five days after the expiration of said sixty-day period, the designee provided for in the main agreement shall report in writing to Second Party the number of shares of stock received by him, from whom received, and any other pertinent information that may be requested by Second Party.

Simultaneously with the delivery by said designee of shares of stock to the Second Party as provided in Paragraph Eleventh of the main agreement, said designee is authorized, empowered, and directed to deliver to Second Party all of the shares of stock deposited with him by First Parties hereunder, as well as all of his own shares of stock in the company named on Exhibit A annexed hereto, together with stock powers, signature guarantees, transfer stamps or cash as provided above.

293 Eleventh: Simultaneously with the delivery, as provided in paragraph Tenth hereof, of the shares of stock in the company named on Exhibit A by the said designee to Second Party, Second Party shall deliver to said designee (who is hereby authorized and empowered to receive said stock for and on behalf of each of First Parties) stock certificates or temporary stock certificates made out to each of First Parties or their nominees for the number of shares of preferred and common stock which each of said First Parties is to receive under paragraphs Third and Fourth hereof, less 15% of the respective amount of shares of each class of stock to be received by each First Party. The 15% of the preferred shares and the 15% of the common shares which Second Party is authorized to withhold as above provided, shall be evidenced by the issuance of separate certificates therefor (to be endorsed in blank by each of the First Parties before delivery to them of the balance of their

stock hereunder; or to be accompanied by stock powers duly executed by First Parties and delivered to Second Party, before delivery to them of the balance of their stock hereunder), and shall be held by Second Party as security upon the following terms:

(a) If any of the warranties, representations or statements herein made by First Parties are incorrect or untrue and if Second Party should suffer loss thereby; or

(b) If any liabilities, unforeseen at the time of the audit to be made by Harry J. Reicher & Company under paragraph Third hereof or undisclosed by said audit, should develop and reduce the net worth and/or reduce the net profit for the twelve months' period ending April 30, 1941, of the company named on Exhibit A below that shown on said audit; or

(c) If any contingent liability, for which a reserve is set up either on the books of said company or in the course of said audit by Harry J. Reicher & Company, should become an accrued liability in a greater amount than the sum reserved against it in said audit; or

(d) If First Parties should fail to perform any of the terms and conditions hereof on their part to be performed and Second Party should suffer loss on account thereof;

then in any one or more of the events just stated, Second  
294 Party shall have the right to sell the shares of stock held as security by it or any part thereof, either at public or private sale, at such price as may be available, upon notice mailed ten days before said sale to each of First Parties at their respective addresses noted at the outset of this agreement, stating the time and place thereof, and apply the net proceeds thereof after deducting the expenses of the sale against the loss sustained by it. Should the net proceeds of any such sale exceed the amount of Second Party's loss, each of First Parties' proportionate share of said excess shall be turned over to him. Second Party shall have the right, so far as consistent with law, to purchase any shares of stock sold pursuant hereto. Second Party shall have the right to withhold the delivery of the shares of stock herein referred to for the purposes enumerated above for a period of three years from the closing date hereof, provided, however, that at any time or from time to time during said period, Second Party, on two-thirds vote of its Board if Directors, may release all or part or parts thereof. At the expiration of three years from the closing date hereof, any of the aforesaid shares of stock remaining in the hands of Second Party (except any that it may have purchased at a sale held pursuant hereto) shall be delivered to each of First Parties in the proportions due them if no claim against which such stock is held as security

has been made by Second Party and remains undisposed of at that time; in the event such claim has been made and is undisposed of, Second Party may hold said stock until said claim is finally disposed of.

First Parties shall not be liable in damages for any amount in excess of the stock withheld hereunder by reason of the happening of any of the events set forth in this paragraph Eleventh, but the provisions hereof shall not be deemed to exclude or in any wise impair Second Party's right of rescission for a breach of this agreement, or for breach of warranty, or for misrepresentation.

First Parties may at any time substitute in lieu of the stock held as above provided, a good and sufficient surety company bond in an amount acceptable to Second Party; Second Party shall be the sole judge as to the amount of said bond.

Twelfth: First Parties hereby jointly and severally appoint and designate the individual named in the main agreement as the "designee" as their true and lawful attorney-in-fact, for them and each of them in their respective names, places and steads, with full power and authority to said designee to perform such acts and grant or withhold such consents and approvals and do whatever may be required of or permitted to said designee, as fully and to all intents and purposes as said First Parties jointly or severally might or could do if personally present, hereby ratifying and confirming as binding and conclusive upon them and each of them all that said designee shall do or cause to be done by virtue hereof, and the First Parties hereby adopt all the provisions of the main agreement with respect to said designee contained in paragraph Thirteenth thereof, and the First Parties agree that all action taken by the First Parties to the main agreement under the provisions of said paragraph Thirteenth shall be binding upon and shall have the same force and effect as though taken by the First Parties hereto, the intention being that the designee who may from time to time be acting under the main agreement shall also at all times be the designee under this agreement.

Thirteenth: Wherever the expression "closing date" is used herein it shall be deemed to be the same date as the closing date fixed by the main agreement.

Fourteenth: If the main agreement is cancelled in accordance with the provisions thereof, this agreement shall likewise be deemed cancelled. It is expressly understood and agreed, however, that cancellation of this agreement shall in no wise affect the purchase and sale of the common shares of Second Party provided for in Paragraph Fifth hereof, it being intended that the

purchase and sale of said shares are subject to no condition whatsoever.

**Fifteenth:** First Parties agree that at the time for delivery of their stock to the designee as provided in paragraph Tenth hereof, they will simultaneously therewith deliver to said designee resignations signed by all of the directors of the company named on Exhibit A (except such, if any, as may be, at the time of such deposit, directors of Second Party) to become effective upon the closing date hereof as defined in paragraph Thirteenth hereof, but not otherwise, and said resignations shall be delivered by said designee to Second Party at the same time he delivers the stock as provided in said paragraph Tenth to Second Party.

**Sixteenth:** To the extent that the provisions, if any, contained in Exhibit J differ from or are inconsistent with the provisions of the main body of this agreement, the provisions of Exhibit J shall supersede the provisions contained in the main body of this agreement.

**Seventeenth:** Any breach of this agreement by any of First Parties shall be deemed a breach hereof by all First Parties to the extent of entitling Second Party to rescind this agreement or to refuse to perform the same. If for any reason the Second Party shall become entitled to rescind or to refuse to perform the main agreement, the Second Party shall then likewise be entitled to rescind or to refuse to perform this agreement.

**Eighteenth:** It is understood and agreed that wherever, either in this agreement or in the main agreement or any of the agreements executed simultaneously herewith with Second Party, provision is made for action by a specified fraction of the total number of designees provided for in this agreement, the main agreement and agreements executed simultaneously herewith with Second Party, the designee named in the main agreement and reappointed by this agreement shall be counted for all purposes as one.

**Nineteenth:** It is expressly understood and agreed that except for the purchase and sale of common stock of Second Party provided for in paragraph Fifth hereof, this agreement shall not become effective unless the Commissioner of Internal Revenue of the United States on or before the closing date hereof, enters into a closing agreement or closing agreements approved by the Secretary, Under Secretary or an Assistant Secretary of the Treasury in accordance with the Internal Revenue Act and Code and Regulations, declaring that the transaction contemplated hereby and

by the agreements executed simultaneously herewith with Second Party, are or constitute a tax-free reorganization.

298 In witness whereof, the individual parties have affixed their hands and seals, and the corporate parties have caused these presents to be duly executed under seal, the day and year first above written.

H. D. HORTON. [LS]

R. G. CONGER. [LS]

O. P. ROBERSON. [LS]

*First Party.*

[SEAL]

ASSOCIATED TRANSPORT, INC.

By B. M. SEYMOUR, [LS]

*President.*

*Second Party.*

Attest:

B. D. Ryan,

*Secretary.*

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### EXHIBIT A

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named hereon; that the ownership of said stock is accurately and truthfully listed hereon; that all of the issued shares of stock are fully paid and nonassessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments or any other claims, except as may otherwise be stated hereon; that there are no agreements, either written or oral, concerning the sale, transfer, or other disposition of any of said stock or concerning the voting rights or any other rights pertaining thereto, except as noted hereon; that each of First Parties is of lawful age, is both the legal and beneficial owner of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement:

## CONGER REALTY COMPANY, INCORPORATED

(Name of Company)

## NORTH CAROLINA

(State of Incorporation)

Class or classes of stock				Total number of shares authorized
Preferred				None 1,000
Common				

1	2	3	4	5
Names of First Parties	Number of shares of preferred stock owned	Number of shares of common stock owned	Percentage of total Number of preferred shares of Second Party to be received	Percentage of total Number of common shares of Second Party to be received
H. D. Horton		980/10	100%	100%
R. G. Conger		2/10		
O. P. Roberson		2/10		

Total number of shares issued and outstanding, 1,000.

These shares have been endorsed in blank to Mr. H. D. Horton.

Total No. of shares issued and outstanding-----

300.

## EXHIBIT B

First Parties represent and warrant that they have not either individually or collectively any interest, direct or indirect, in any motor, rail, or water carrier, whether operating or non-operating, either as directors, officers, or stockholders, or by means of a holding or investing company or companies, voting trust or trusts, or in any other manner, other than in Second Party, except as follows:

Exceptions: None.

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## EXHIBIT C

First Parties represent and warrant that the following balance sheet reflects the financial condition of the company to which it relates including contingent liabilities with substantial correctness. First Parties further represent and warrant that the rates of depreciation employed by the company named below during the past five years are as set forth below. First Parties further represent, warrant and agree that all assets of said company, including but not limited to equipment and real estate, are kept on the books of said company at cost, and that they will be, for the four months' period ending April 30, 1941, kept on the books of said company at cost, and that the depreciation rates

employed by said company for the four months' period ending April 30, 1941, will be the same as those set forth below for the year 1940.

### CONGER REALTY COMPANY, INCORPORATED

(Name of Company)

	1936	1937	1938	1939	1940
				Percent 2	Percent 2
Real estate					
Automotive vehicles					
Trailer Vehicles					

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### CONGER REALTY COMPANY, INCORPORATED

Balance Sheet as of Close of Business April 30, 1941

#### ASSETS

Cash in bank	\$168. 41
Accounts Receivable	2, 700. 00
Real Estate—Land	136, 858. 03
Buildings—Net	282, 198. 02
Prepaid Expenses	6, 361. 13
Total Assets	428, 285. 59

#### LIABILITIES

Accounts Payable	(2, 921. 50)
Notes Payable—American Trust Company	165, 000. 00
Notes Payable—Horton Motor Lines, Inc.	97, 706. 88
Accruals—General Expense and Taxes	15, 000. 06
Reserve for State and Federal Income Taxes	22, 135. 60
Total Liabilities	297, 020. 04

#### NET WORTH

Capital Stock	100, 000. 00
Surplus	31, 265. 55
Total Net Worth	428, 285. 59
Total Liabilities and Net Worth	428, 285. 59

(Initialed) HDH.

## EXHIBIT D

**CONGER REALTY COMPANY, INCORPORATED—Income Statement**  
**Year Ended April 30, 1941**

INCOME	
Rental Income from Owned Property.....	\$122,203.22
Rental Income from Sub-Leased Property.....	3,000.00
Total Income.....	<u>125,803.22</u>
EXPENSES	
Depreciation.....	8,314.87
Taxes.....	11,142.64
Insurance.....	1,883.16
Legal Expenses.....	105.00
Interest Expense.....	7,840.81
Miscellaneous Expense.....	420.21
Total Expenses.....	<u>29,706.69</u>
Net Profit.....	<u>96,096.53</u>

(Initialed) HDH.

## EXHIBIT E

First Parties represent and warrant that there are listed below a true, accurate and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement, of all encumbrances and liens thereon, and of all real estate leased by said company, showing the location, monthly rentals, expiration dates, and other details with regard to such leased premises:

## 305 CONGER REALTY COMPANY—SCHEDULE OF REAL ESTATE

April 30, 1941

Location	Street address	To whom leased	Address	Monthly rental	Expiration date
Charlotte, N. C. <sup>11</sup>	1001-31 S. Clarkson St.	Horton Motor Lines.	Charlotte, N. C.	\$2,500.00	8-31-43
Charlotte, N. C. <sup>12</sup>	1004-18 S. Clarkson St.	Horton Motor Lines.	Charlotte, N. C.	750.00	1-1-45
Philadelphia, Pa. <sup>11</sup>	1701 N. Delaware Ave.	Horton Motor Lines.	Charlotte, N. C.	1,800.00	10-15-41
Pittsburgh, Pa. <sup>12</sup>	219 Dasher St., North Side.	Horton Motor Lines.	Charlotte, N. C.	1,900.00	5-12-45
Atlanta, Ga. <sup>12</sup>	172 Howell St. NE.	Horton Motor Lines.	Charlotte, N. C.	1,400.00	6-30-44
Baltimore, Md. <sup>11</sup>	2101 Washington Blvd.	Horton Motor Lines.	Charlotte, N. C.	1,900.00	8-31-43
Atlanta, Ga.	Howell St., N. E.	Not under lease.			

<sup>1</sup> Balance due American Trust Company, Charlotte, North Carolina, on this property at 4-30-41, \$165,000.00.

<sup>2</sup> Remarks: Option to renew for 5 years on same terms.

(Initialed) HDH.

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## CONGER REALTY COMPANY—SCHEDULE OF LEASES

April 30, 1941

Location	Street address	Lessor	Lessor's address	Monthly rental	Expiration date
Charlotte, N. C.	801 S. Summit Ave.	J. Luther Snyder	Charlotte, N. C.	600.00	8-31-44

Remarks: Agreement in Lease to extend expiration date beyond 5-year period for such additional time as is necessary to complete addition to building.

Note: This property is subleased to Brown Equipment and Manufacturing Company, Incorporated, for the life of this lease at a rental of \$900.00 per month.

(Initialed) HDH.

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## EXHIBIT F

First Parties represent and warrant that the following is a true and complete list of all executory contracts, including but not limited to employment contracts, to which the company named on Exhibit A annexed hereto is a party, and which are in existence at the date of this agreement, and that said company has no other such contracts, except such as have been made in the ordinary course of business of the company and as are necessary or useful in the conduct of its business. First Parties further represent and warrant that all of the contracts listed thereon are considered advantageous to said company and are not unduly burdensome.

First Parties agree as to any contracts set forth below, which are identified by the word "out" and initialed by the designee of First Parties, and Second Party, that such contract will be eliminated as an obligation of said company on or before the closing date fixed in the annexed agreement.

308

## EXHIBIT G

First Parties represent and warrant that the following is an accurate and complete statement of the insurance coverage of each kind that exists with respect to the company named on Exhibit A annexed hereto as of the date of this agreement, showing the amount and kind of coverage, the names of the insurance companies, expiration dates of insurance policies, and premiums thereon.

## 309 CONGER REALTY COMPANY—SCHEDULE OF INSURANCE

April 30, 1941

Insurance company	Type of coverage	Amount of coverage	Expiration date	Original premium
Hartford	Fire, etc.	\$55,000.00	10-21-42	\$351.47
Equitable	Fire, etc.	30,000.00	10-21-41	238.85
Hartford	Fire, etc.	45,000.00	11-1-41	748.13
Equitable	Fire, etc.	500.00	1-1-42	15.47
Hartford	Fire, etc.	46,000.00	12-15-42	501.66
Hartford	Fire, etc.	10,000.00	3-6-43	138.75
Equitable	Fire, etc.	10,000.00	3-6-43	138.75
Hartford	Fire, etc.	50,000.00	6-30-43	1,068.31
Hartford	Builders Risk	25,200.00	6-1-41	359.42
Hartford	Builders Risk	44,000.00	12-15-42	501.66

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## EXHIBIT H

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto, nor is any such action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises, or privileges null and void.

None.

Any actions, if any, not listed, are fully covered by insurance.

311

## EXHIBIT I

First Parties represent, warrant, and agree that all items listed below were actually expended by or became accrued liabilities of the company named on Exhibit A annexed hereto during the twelve months' period ending April 30, 1941 and that as to the items below under the column "Non-recurring Items," neither said items nor any items similar or corresponding thereto will be or become, in whole or in part, obligations of said company at any time after the closing date of this agreement.

In consideration of the foregoing representations, warranties and agreements, it is agreed that in determining the amount of common stock of Second Party to be received by First Parties under subdivision (2) of paragraph Third of this agreement, the sum of \$ shall be added to the adjusted net profits of said company as determined by Harry J. Reicher, less provision for taxes at the 1940 rates on the said sum of \$

Nonrecurring Items, None.

312

## EXHIBIT J

The company named under Exhibit A annexed hereto has purchased sites for buildings to be used by Horton Motor Lines, Inc. at Greenville, S. C., and Washington, D. C. Negotiations are in process for the purchase of additional property in Baltimore, adjacent to property presently owned and in use. Plans and specifications are being prepared for the construction of buildings on the three properties referred to.

The word "modified" as used in the concluding paragraph of paragraph Sixth of the annexed agreement shall be deemed to mean "waived in whole or in part".

The expression "main body of this agreement" in each of the two places where said expression appears in paragraph Sixteenth of the annexed agreement is deemed to include any exhibit or exhibits.

It is understood that B. M. Seymour has executed or is about to execute a subscription agreement for certain shares of the common stock of Second Party.

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## EXHIBIT C-1b

Exhibits A, E, F, H, I, and J, attached to the contracts of Arrow Carrier Corporation, Barnwell Brothers, Incorporated, Consolidated Motor Lines, Incorporated, McCarthy Freight System, Inc., M. Moran Transportation Lines, Inc., Southeastern Motor Lines, Inc., Transportation, Incorporated, Barnwell Warehouse and Brokerage Company, Brown Equipment and Manufacturing Company, Southern New England Terminals, Inc., are grouped in the order above named, and segregated as to company.

Exhibits C and D attached to the said contracts, are contained in Exhibits BMC-45, B-2, and B-6.

Copies of such exhibits are omitted for any company where no special provision was contained therein.

Exhibits B and G of the contracts are covered in Exhibits BMC-45 C-1c.

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## EXHIBIT A

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named hereon; that the ownership of said stock is accurately and truthfully listed hereon; that all of the issued shares of stock are fully paid and non-assessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments or any other claims, except as may otherwise be stated hereon; that there are no agree-

ments, either written or oral, concerning the sale, transfer or other disposition of any of said stock or concerning the voting rights or any other rights pertaining thereto, except as noted hereon; that each of First Parties is of lawful age, is both the legal and beneficial owner of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement:

### THE TRANSPORT COMPANY

(Name of Company)

DELAWARE

(State of Incorporation)

Class or classes of stock				Total number of shares authorized
Preferred				2,000
Common				2,500

1	2	3	4	5
Names of First Parties	Number of shares of preferred stock owned	Number of shares of common stock owned	Percentage of total number of preferred shares of Second Party to be received	Percentage of total number of common shares of Second Party to be received
The Transport Company	1,120	1,976½	100%	100%

Total No. of shares issued and outstanding 1,380 ; 1,976½.

315 There are 260 shares of preferred stock of the above company owned by others than First Party. First Party represents that said stock is callable at \$105. It is understood and agreed that the balance sheet of April 30, 1941, to be handed to Harry J. Reicher & Company under the provisions of paragraph Third of the annexed contract will be adjusted to reflect the situation which would have resulted if all of the issued and outstanding preferred stock above described had been called and the redemption price thereof had been paid prior to April 30, 1941.

The First Party owes \$900,000. on account of the purchase price of said stock owned by it. Said preferred stock owned by it is pledged with Kuhn, Loeb & Co. as security for a note of First Party for \$107,000. The former owners of said common stock have a right to pledge and may have pledged some or all thereof, the agreement with them providing that any such pledge shall be on such terms that the pledged stock may be released upon paying to them respectively their proportionate part of said unpaid balance of said purchase price.

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## EXHIBIT E

First Parties represent and warrant that there are listed below a true, accurate and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement, of all encumbrances and liens thereon, and of all real estate leased by said Company, showing the location, monthly rentals, expiration dates and other details with regard to such leased premises:

## REAL ESTATE—ARROW CARRIER CORPORATION, PATERSON, N. J.

April 30, 1941

Description	Location	Book cost	
		Land	Building
(1) Terminal and Office Brick and Steel	212-218 Getty Ave., Paterson, New Jersey	\$39,511.77	\$212,942.49
(2) Storage Garage Corrugated Steel	184-194 Getty Ave., Paterson, New Jersey	5,000.00	18,264.73
(3) Repair Garage, Brick	do.		5,317.26
(4) Storage Garage, Brick	918-924 East 24 St., Paterson, New Jersey	3,000.00	22,144.85
(5) Terminal and Office, Brick	232-236 Walnut St., Allentown, Penna.	5,000.00	46,116.93
(6) Parking Lot	224-238 Getty Ave., Paterson, New Jersey	30,832.20	
(7) Terminal, Corrugated Steel	Danville, Penna.		4,138.25
(8) Dwelling, Frame	196 Getty Ave., Paterson, N. J.	2,000.00	1,553.00
(9) Undeveloped Lots	Jerome and Kearney Sts., Allentown, Penna.		21,669.60
(10) Undeveloped Lots	1129 Remington Ave., Scranton, Penna.		2,596.28
		85,343.97	334,743.39

\* Mortgage held by Citizens Trust Company, Paterson, N. J., as security for \$5,000.00 loan.  
 \* Mortgage held by Paterson Building & Loan Association amount of \$12,000.00.

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## LEASES—ARROW CARRIER CORPORATION, PATERSON, NEW JERSEY

April 30, 1941

Location	Lessor	Expiration	Monthly rent
72 Olive St., Johnson City, N. Y.	Della Penna Bros. & Mezzanonna	10/31/42	\$70.00
139 Welles St., Forty Fort, Penna.	Frank R. Matheson	10/14/43	30.00
139 Welles St., Forty Fort, Penna.	Edward Eyerman & Son	10/14/42	50.00
Cedar St., Hazleton, Penna.	Duplan Silk Corporation	1/31/47	250.00
11th Ave. & Reading R. R., Lebanon, Penna.	John S. Weaver	7/31/41	60.00
525/531 West 24 St., New York City	Grace B. Underwood	12/31/46	666.67
North Broad St., Phillipsburg	A. W. Leidy	4/29/43	50.00
McKnight & W. Amity Sts., Reading, Penna.	Parrish Pressed Steel Co.	5/31/42	100.00
1200 Railroad Ave., Sunbury, Penna.	Merit Laundry	8/31/42	100.00
Locust St., Williamsport, Penna.	Abe & Irma Fischer	6/30/41	125.00
End of Jefferson Ave., Scranton, Penna.	Scranton Electric Co.	12/31/41	150.00
Arch St., Shamokin, Penna.	Shamokin & Edgewood Elec. Railway.	10/31/41	75.00

## EXHIBIT F

ARROW CARRIER CORPORATION, PATTERSON, N. J.

April 30, 1941

First Parties represent and warrant that the following is a true and complete list of all executory contracts, including but not limited to employment contracts, to which the company named on Exhibit A annexed hereto is a party, and which are in existence at the date of this agreement, and that said company has no other such contracts, except such as have been made in the ordinary course of business of the company and as are necessary or useful in the conduct of its business. First Parties further represent and warrant that all of the contracts listed thereon are considered advantageous to said company and are not unduly burdensome.

First Parties agree as to any contracts set forth below, which are identified by the word "out" and initialed by the designee of First Parties, and Second Party, that such contract will be eliminated as an obligation of said company on or before the closing date fixed in the annexed agreement.

Employment Contracts effective when, as, and if, The Transport Company takes title and for five years thereafter:

John E. Ackerman.....	\$25,000.00
James J. Buckley, Jr.....	9,000.00
George F. Whitehead.....	12,000.00
J. S. A. Out (John Hamilton).....	6,000.00)

## EXHIBIT H

ARROW CARRIER CORPORATION, PATTERSON, N. J.

April 30, 1941

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto, nor is any such action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises, or privileges null and void.

(1) The Zurich General Accident and Liability Company is handling 21 claims against the company for motor accidents, the total of which aggregates \$6,345.00. The Company is protected by adequate coverage for both public liability and property damage so that no contingent liability exists in this connection.

(2) Cargo damage claims of approximately \$300.00 were unsettled at April 30, 1941.

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## EXHIBIT I

First Parties represent, warrant and agree that all items listed below were actually expended by or became accrued liabilities of the company named on Exhibit A annexed hereto during the twelve months' period ending April 30, 1941, and that as to the items below under the column "Nonrecurring Items," neither said items nor any items similar or corresponding thereto will be or become, in whole or in part, obligations of said company at any time after the closing date of this agreement.

In consideration of the foregoing representations, warranties and agreements, it is agreed that in determining the amount of common stock of Second Party to be received by First Parties under subdivision (2) of paragraph Third of this agreement, the sum of \$40,793.70 shall be added to the adjusted net profits of said company as determined by Harry J. Reicher, less provision for taxes at the 1940 rates on the said sum of \$40,793.70.

## Nonrecurring Items:

Boat expense	\$5,700.00
John Hamilton Salary	7,200.00
John E. Ackerman	11,000.00
George F. Whitehead	6,000.00
James J. Buckley, Jr.	9,000.00
Moving of garage	1,893.70

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## EXHIBIT J

Paragraph Second appearing in the main body of the annexed Contract is hereby deleted, and the following is substituted therefor:

"Second: Second Party represents and warrants (1) that it has no interest, direct or indirect, in any motor, rail or water carrier whether operating or nonoperating, either as a stockholder or by means of a holding or investment company or companies, voting trust or trusts, or in any other manner, other than that which

results from the agreements which were executed under date of June 11, 1941, with the stockholders of the companies listed in paragraph Fourteenth hereof; (2) that it has no subsidiaries or affiliates and has incurred no liabilities of any nature, except for compensation for services, for expenses in connection with its organization, for legal fees in connection with the preparation of this agreement and the agreements which were executed under date of June 11, 1941, with the stockholders of the companies listed in paragraph Fourteenth hereof, for accounting services; and for the effectuation or attempted effectuation of the purposes thereof; that Second Party is a validly organized Delaware corporation, that its directors at this time are H. D. Horton, B. M. Seymour, Wiley Moore, Clifford C. Brock, R. W. Barnwell, Everett J. Arbour, John J. McCarthy, and John P. Altwater, and its officers are: Chairman of the Board, H. D. Horton; President, Burge M. Seymour; Vice President, Office vacant; Secretary, B. D. Ryan; Treasurer, Burge M. Seymour; that the only issued and outstanding stock of Second Party is 57,924 shares of common stock owned on the books of Second Party by various persons; (4) that the charter of Second Party and the Amendments thereto are as filed in the office of the Secretary of State of Delaware, that no amendments to said charter have been filed subsequent to May 26th, 1941, and that the authorized stock, the classes, preferences and rights thereof are as set forth in said charter and amendments; (5) that there are no agreements, either written or oral, concerning the sale, transfer or other disposition of the authorized and unissued stock of Second Party, except such agreements as were executed under date of June 11, 1941, with the stockholders of the companies listed in paragraph Fourteenth hereof and subscription agreements executed or about to be executed by Mr. B. M. Seymour for certain shares of the common stock of Second Party."

322 "Wherever reference is made in the main body of the annexed contract to the agreements which were to be executed simultaneously therewith, it is intended to refer to the agreements which were executed under date of June 11, 1941, with the stockholders of the companies listed in paragraph Fourteenth hereof.

Paragraph Eleventh appearing in the main body of the annexed contract is hereby deleted, and the following is substituted therefor:

"Eleventh: Within ten days after decision by the Interstate Commerce Commission on the application or applications re-

ferred to in paragraph Eighth hereof, provided such decision shall constitute approval by the Interstate Commerce Commission as defined in paragraph Fifteenth hereof, the First Party agrees to deliver to the Second Party all of the shares of stock shown on Exhibit A annexed hereto to be owned by it in the company named on said Exhibit. The certificates of stock so delivered shall be endorsed in blank or accompanied by stock powers running to Second Party with signatures guaranteed by a member bank of the Federal Reserve System, or a member of the New York Stock Exchange, and shall be accompanied by the required stock transfer stamps or cash equal to the cost thereof."

Paragraph Twelfth in the main body of the contract annexed hereto is hereby amended by deleting the word "designee" where it appears on the third and fifth lines of the said paragraph and inserting in place thereof the words "First Party." Said paragraph Twelfth is further amended by deleting the parenthetical matter appearing on the fifth, sixth, and seventh lines of said paragraph.

Wherever the term "First Parties" is used in the main body of the contract annexed hereto, it shall be deemed to read "First Party."

Paragraph Fourteenth appearing in the main body of the annexed contract is hereby deleted, and the following is substituted therefor:

"Fourteenth: Second Party has entered into contracts for the acquisition of the stock of the companies listed below: Horton Motor Lines, Incorporated; Consolidated Motor Lines, Incorporated; Barnwell Brothers, Incorporated; McCarthy Freight System, Inc.; M. Moran Transportation Lines, Inc.; Southeastern

Motor Lines, Incorporated; The Transportation, Inc.; 323 Southern New England Terminals, Inc.; Barnwell Warehouse & Brokerage Company; Conger Realty Company; Brown Equipment and Manufacturing Company. First Party has examined and approved all of said contracts, both as to form and substance.

"Second Party agrees that it will not enter into any agreement for the acquisition of stock or any interest in any company other than those named above without the written consent of the designee provided for herein

"(a) as to the form and substance of any such agreement, and

"(b) as to the sufficiency of the number of shares of stock represented by the stockholders signing the same."

Paragraph Seventeenth in the main body of the contract annexed hereto is hereby amended by deleting the word "designee" where it appears in the second and fourth lines of said paragraph and inserting in place thereof the words "First Party."

The word "modified" as used in the concluding paragraph of paragraph Sixth of the annexed agreement shall be deemed to mean "waived in whole or in part."

The expression "main body of this agreement" in each of the two places where said expression appears in paragraph Sixteenth of the annexed agreement is deemed to include any exhibit or exhibits.

Because of the method used by Arrow Carrier Corporation in handling its tire accounts, there shall be substituted the following procedure in lieu of the procedure provided for in subdivision (c) of paragraph Third:

For the purpose of determining net worth, an inventory of tires on equipment shall be taken as of April 30, 1941, and computed at 50% of cost.

For the purpose of determining tire expense for the twelve months' period ending April 30, 1941, such tire expense shall be computed at the average tire expense for the three calendar years of 1938, 1939, and 1940, adjusted for the increased number of vehicles owned by this company on April 30, 1941.

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#### EXHIBIT A

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named hereon; that the ownership of said stock is accurately and truthfully listed hereon; that all of the issued shares of stock are fully paid and nonassessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments, or any other claims, except as may otherwise be stated hereon; that there are no agreements, either written or oral, concerning the sale, transfer, or other disposition of any of said stock or concerning the voting rights or any other rights pertaining thereto, except as noted hereon; that each of First Parties is of lawful age, is both the legal and beneficial owner of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement: (See "Note No. 1" at the end of this Exhibit A.)

## BARNWELL BROTHERS, INCORPORATED

(Name of Company)

## NORTH CAROLINA

(State of Incorporation)

Class or classes of stock				Total number of shares authorized
Preferred, par value, \$100.00				500
Common, par value, \$100.00				1,500

1	2	3	4	5
Names of First Parties	Number of shares of preferred stock owned	Number of shares of common stock owned	Percentage of total number of preferred shares of Second Party to be received	Percentage of total number of common shares of Second Party to be received
R. W. Barnwell	183 1/2	20	2.28	2
Willard Smith Barnwell	52	40	4.92	4
Robert William Barnwell, Jr.		6 1/2	.60	.65
John K. Barnwell	144 1/2	59	5.79	5.9
Dolores Morrow Barnwell	20	54	5.46	5.4
Mary Barnwell		5	.45	.5
James A. Barnwell	144 1/2	48 1/2	4.83	4.85
Cornelia Vincent Barnwell	21	70	6.96	7
Hannah Bomse		28	2.58	2.80
William R. Lacey	415 1/2	82	8.56	8.20
Arthur D. Crowe		28	2.58	2.80
M. M. Stuart	15	50	4.97	5
323 F. H. Mendenhall		10	.92	1
Mary Thomas Walker		5	.45	.5
P. L. Walker	3	5	.53	.5
J. Hardy Hurst		5	.46	.5
A. Hall Barnwell		4	.37	.4
E. P. Harrison, Jr.	20		.48	
E. C. Crowder	10		.24	
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Robert William Barnwell, Jr.		18	1.66	1.8
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Willard Holt Barnwell		36	3.32	3.6
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Joseph Clarendon Barnwell		36	3.32	3.6
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Eleanor Smith Barnwell		20	1.85	2
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Betty Lynn Barnwell		20	1.85	2
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Richard Brantley Barnwell		20	1.86	2
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Julian Forrest Barnwell		20	1.85	2
Barnwell Warehouse and Brokerage Company	93	310	30.83	31

Total No. of shares issued and outstanding, 323, 1,000.

Note No. 1.—The trustee in each of the seven trusts listed on this Exhibit A is the legal owner of record of the respective shares indicated and is empowered to dispose of the same as provided herein, but is not the beneficial owner of said shares.

## EXHIBIT E

First Parties represent and warrant that there are listed below a true, accurate and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement, of all encumbrances and liens thereon, and of all real estate leased by said company, showing the location, monthly rentals, expiration dates and other details with regard to such leased premises:

## REAL ESTATE OWNED

	Total cost	Res. for deprec.	Book value	Incumbrances or liens	
				Amount	Description
Shelby, N. C.	\$6,692.92	\$482.08	\$6,210.84		
Charlotte, N. C.	37,381.63	998.37	36,383.26	\$2,750.00	Mortgage
Ch'ville, Va.	14,249.41	262.62	13,986.79		
Lyneburg, Va.	17,972.06	426.91	17,545.15		
Burlington, N. C.	106,986.01	2,173.34	104,812.67	35,000.00	Mortgage
High Point, N. C.	2,542.75		2,542.75		
Philadelphia, Pa.	15,241.17		15,241.11		
Martinsville, Va.	800.00		800.00		
Total	201,865.89	4,343.32	197,522.57	37,750.00	

## REAL ESTATE LEASED

Location	Expiration date	Monthly rental
490 Greenwich St., N. Y. C.	9/30/43	\$900.00
489 Greenwich St., N. Y. C.	9/30/43	100.00
908-910 Cameron St., Alexandria, Va.	4/15/42	100.00
Lloyd & Gramby St., Baltimore, Md.	4/1/46	200.00
East Main St., Martinsville, Va.	4/15/42	50.00
90 Grove St., Paterson, N. J.	9/30/43	200.00
35-43 Perwick St., N. Y. C.	Month to month	75.00
307 McMannen St., Durham, N. C.	"	25.00
712-9th Ave., Hickory, N. C.	"	15.00
111 E. Luray St., Philadelphia, Pa.	"	125.00
37 King St., New York City	"	70.00
675 Garden St., Elizabeth, N. J.	"	100.00
Henry & Cameron Sts., Alexandria, Va.	"	150.00
239 Haywood St., Ashville, N. C.	"	18.00
Franklin Hotel, Richmond, Va.	"	16.00
316 Park Ave., Winston-Salem, N. C.	"	50.00
Luray & Front St., Philadelphia, Pa.	"	20.00
Forty-Fort Theatre, Forty-Fort, Pa.	"	30.00
905 Greenwood St., Cumberland, Md.	"	40.00

## EXHIBIT F

First Parties represent and warrant that the following is a true and complete list of all executory contracts, including but not limited to employment contracts, to which the company named on Exhibit A annexed hereto is a party, and which are in exist-

ence at the date of this agreement, and that said company has no other such contracts, except such as have been made in the ordinary course of business of the company and as are necessary or useful in the conduct of its business. First Parties further represent and warrant that all of the contracts listed thereon are considered advantageous to said company and are not unduly burdensome.

First Parties agree as to any contracts set forth below, which are identified by the word "out" and initialed by the designee of First Parties; and Second Party, that such contract will be eliminated as an obligation of said company on or before the closing date fixed in the annexed agreement.

Building Contract, Philadelphia Terminal	\$42,000.00
Architect's Fee	1,200.00
Engineer's Fee	500.00
Anchor Fencing	1,313.20
Purchase of eleven Mack LJT Tractors	51,755.00
Purchase of eleven Corbitt Trailers	21,735.68

Employment contracts with certain of its employees, none of which extend beyond December 31, 1941.

Contract with S. W. Shelton, Lawyer, Richmond, Virginia, for personal services as Public Relations Counsel, compensation \$3,600.00 per year. Contract may be terminated at any time upon 12 months' previous notice.

#### EXHIBIT H

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto, nor is any such action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises, or privileges null and void.

An action at law pending in the United States District Court for the Middle District of North Carolina, Durham Division, in which Henry G. Miller, Receiver of Central Mutual Insurance Company of Chicago, is plaintiff, and Barnwell Brothers, Incorporated, is defendant for the sum of \$29,087.65 based on alleged right of assessment against the defendant under certain insurance policies and on alleged unpaid premiums. Defendant is advised

that it has a complete defense to said action, but if the plaintiff should prevail, the dependant is advised that it has a set-off in the sum of approximately \$20,000.00 against any judgment which the plaintiff might obtain.

All other pending or threatened litigation is fully covered by insurance.

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## EXHIBIT I

First Parties represent, warrant and agree that all items listed below were actually expended by or became accrued liabilities of the company named on Exhibit A annexed hereto during the twelve months' period ending April 30, 1941, and that as to the items below under the column "Nonrecurring Items," neither said items nor any items similar or corresponding thereto will be or become, in whole or in part, obligations of said company at any time after the closing date of this agreement.

In consideration of the foregoing representations, warranties and agreements, it is agreed that in determining the amount of common stock of Second Party to be received by First Parties under subdivision (2) of paragraph Third of this agreement, the sum of \$8,420.32 shall be added to the adjusted net profits of said company as determined by Harry J. Reicher, less provision for taxes at the 1940 rates on the said sum of \$8,420.32.

Nonrecurring Items: 1. Extraordinary legal, etc., \$8,420.32.

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## EXHIBIT J

1. First Parties hereby jointly and severally appoint and designate R. W. Barnwell of Burlington, North Carolina, and Virgil R. Goode of Travelers Building, Richmond, Virginia, as their true and lawful attorneys in fact for them and each of them in their respective names, places and steads with all the power and authority set forth in paragraph Thirteenth and in various other places in this agreement, referred to as the "Designee" provided for by this agreement. They shall together be deemed and considered the "designee" wherever that term is used in said agreement and shall together have only one voice, provided that should either the said R. W. Barnwell or the said Virgil R. Goode, after such notice as may be provided for in this agreement, fail to attend a meeting of designees or fail to act within the time required or if either for any reason be no longer acting hereunder, then the one attending such meeting or the one acting within the required time shall alone exercise all the power and authority of both.

Should the said R. W. Barnwell and the said Virgil R. Goode both attempt to act at a meeting of designees or otherwise but not concur in their decisions so as to permit them to act jointly, neither of their actions shall be considered and there shall be deemed to be a vacancy in the designation of designee hereunder insofar as the particular matter or matters as to which such disagreement exists, are concerned, and in such event any provision contained in any paragraph or part of this agreement which requires or permits the consent, act or approval of the designee provided for herein is waived by First Parties.

2. The word "modified" as used in the concluding paragraph of paragraph Sixth of the annexed agreement shall be deemed to mean "waived in whole or in part."

3. The expression "main body of this agreement" in each of the two places where said expression appears in paragraph Sixteenth of the annexed agreement is deemed to include any exhibit or exhibits.

4. It is understood that B. M. Seymour has executed or is about to execute a subscription agreement for certain shares of the common stock of Second Party.

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## EXHIBIT T

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named hereon; that the ownership of said stock is accurately and truthfully listed hereon; that all of the issued shares of stock are fully paid and non-assessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments, or any other claims, except as may otherwise be stated hereon; that there are no agreements, either written or oral, concerning the sale, transfer or other disposition of any of said stock or concerning the voting rights or any other rights pertaining thereto, except as noted hereon, that each of First Parties is of lawful age, is both the legal and beneficial owner of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement:

## CONSOLIDATED MOTOR LINES, INC.

(Name of Company)

## CONNECTICUT

(State of Incorporation)

Class or classes of stock				Total number of shares authorized
Preferred.....				None
Common.....				200,000

Names of First Parties	Number of shares of preferred stock owned	Number of shares of common stock owned	Percentage of total number of preferred shares of Second Party to be received	Percentage of total number of common shares of Second Party to be received
Joseph Arbour.....	None	293	.1333	.1333
Emma Arbour.....	None	260	.1182	.1182
Everett J. Arbour.....	None	255	.1152	.1132
Helen Arbour.....	None	180	.0819	.0819
Everett J. Arbour—Trustee.....	None	40	.0182	.0182
Everett J. Arbour—Trustee.....	None	40	.0182	.0182
John W. Ghent.....	None	35	.0158	.0158
Elsie Cotter Ghent.....	None	41	.0186	.0186
John W. Ghent—Trustee for the Benefit of: Mary Elizabeth Ghent.....	None	5	.0023	.0023
Elsie G. Ghent.....	None	5	.0023	.0023
Walter H. Ghent.....	None	5	.0023	.0023
John W. Ghent, Jr.....	None	5	.0023	.0023
Barbara A. Ghent.....	None	5	.0023	.0023
Helen H. Jacoboff.....	None	40	.0182	.0182
Phoenix Securities Corp.....	None	374	.3520	.3520
Earl E. Simpson.....	None	32	.0145	.0145
Wendell E. Simpson.....	None	43	.0196	.0196
Laura Bess Payson.....	None	43	.0196	.0196
Hazel E. Simpson.....	None	1	.0196	.0196
Alexis P. Scott.....	None	17	.0077	.0077
Total number of shares issued and outstanding.....	None	2,199		

Note: Contract dated June 12, 1936 with Phoenix Securities Corporation provided that all stock holders agreed not to sell any or all of their holdings without first giving Phoenix the same opportunity to dispose of their stock pro rata under the same terms and conditions.

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## EXHIBIT E

First Parties represent and warrant that there are listed below a true, accurate and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement, of all encumbrances and liens thereon, and of all real estate leased by said company, showing the location, monthly rentals, expiration dates, and other details with regard to such leased premises:

## CONSOLIDATED MOTOR LINES, INC.

I. Real Estate owned—None.

II. Real Estate Leases.

Date	Location	Maturity	Annual rental
	Hartford—Main Office	Monthly Basis	\$5,800.00
10/10/35	Hartford Terminal & Shops	12/31/45	5,375.00
7/30/36	Hartford Terminal & Shops	12/31/45	3,664.30
8/1/39	Hartford Terminal & Shops	12/31/45	1,800.00
5/1/41	New Britain Terminal	4/30/46	4,800.00
	New Haven Terminal	Monthly Basis	3,913.80
1/26/37	New York City Terminal	4/30/49	26,500.00
12/28/38	New York City Terminal	4/30/49	
		(2/1/39 to 12/31/41)	3,000.00
		(1/1/42 to 12/31/45)	3,330.00
		(1/1/46 to 4/30/49)	3,650.00
			11,000.00
2/1/41	Boston Terminal	1/31/56	3,000.00
7/6/37	Providence Terminal	7/31/42	3,000.00
7/28/36	Springfield Terminal	9/30/46	13,500.00
	Waterbury Terminal	Monthly Basis	1,200.00
8/21/33	Bridgeport Terminal	12/1/43	6,172.80
7/13/38	Worcester Terminal	7/31/41	2,100.00
6/17/36	Albany Terminal	8/14/41	4,200.00
1/19/37	Newark Terminal	5/7/47	6,000.00
2/10/40	Newark Terminal	5/7/47	1,500.00
1/14/37	Norwich Terminal	2/28/42	1,000.00
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3/29/37	Lawrence Terminal	4/30/42	2,000.00
2/15/37	Pittsfield Terminal	9/1/47	1,800.00
9/ 3/36	Philadelphia Terminal	10/14/41	4,800.00
7/12/37	Geneva Terminal	7/12/47	4,000.00
1/26/39	Buffalo Terminal	11/1/43	3,720.00
10/31/36	Syracuse Terminal	11/30/41	1,600.00
8/ 4/37	Utica Terminal	8/31/42	4,500.00
	Binghamton Terminal	Monthly Basis	600.00
	Binghamton Truck Storage	Monthly Basis	144.00
1/10/41	Stamford Terminal	7/9/41	200.00

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## EXHIBIT F

First Parties represent and warrant that the following is a true and complete list of all executory contracts, including but not limited to employment contracts, to which the company named on Exhibit A annexed hereto is a party, and which are in existence at the date of this agreement, and that said company has no other such contracts, except such as have been made in the ordinary course of business of the company and as are necessary or useful in the conduct of its business. First Parties further represent and warrant that all of the contracts listed thereon are considered advantageous to said company and are not unduly burdensome.

First Parties agree as to any contracts set forth below, which are identified by the word "out" and initialed by the designee of First Parties, and Second Party, that such contract will be eliminated as an obligation of said company on or before the closing date fixed in the annexed agreement.

1. Sales commission contract dated December 18, 1937 with Harold C. Davis. Contract is for one year and is automatically renewable for successively yearly periods. Sixty days notice of

termination must be given by either party before expiration of the term of the contract.

2. Retainer agreement dated February 14, 1937 with Hugh M. Joseloff, expires December 31, 1941.

3. Contract dated June 12, 1936 with Phoenix Securities Corporation provides that all stockholders agree not to sell any or all of their holdings without first giving Phoenix the same opportunity to dispose of their stock pro rata under the same terms and conditions.

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## EXHIBIT H

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto, nor is any such action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises or privileges null and void.

## PENDING LITIGATION

Date of accident	Plaintiff and amount of suit	Remarks
9/28/38	Edith Weatherwax \$500.00	Liability questionable. Reserve \$250.00.
11/23/38	United Electric Light Co. of Springfield, Mass., \$300.00	Liability very questionable. Reserve None.
10/10/39	M & M Trans. Co., \$1,500.00	Judgment for Plaintiff \$484. An appeal has been filed by CML. Reserve \$200.00.
10/10/39	Jas. E. MacMillan, \$5,000.00	Liability questionable. Minor injuries. Reserve \$150.00.
7/8/39	Thomas McGrath \$5,000.00	Liability questionable. Minor injuries. Reserve \$100.00.
1/26/40	Frank Coryell, \$500.00 (PD), \$10,000.00 (PI)	Liability yes. Reserve \$300.00. Reserve \$750.00. Reasonably adequate.
2/26/40	James Kennedy, \$5,000.00	Liability questionable. Minor injuries. Reserve \$200.00.
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5/25/40	Louis Orto, \$1,300.00 (PD) \$251,000.00 (PI)	Liability, None. Coroner's Finding exonerated our driver. Plaintiff, owner and operator. (Fatal)
5/25/40	Philip Campinelli, \$50,000.00	Reserve, None. Reserve, \$500.00.
5/25/40	Fred Santino, \$15,000.00	Liability, None. Reserve, \$750.00.
5/25/40	D. Robolotta, \$25,000.00	Liability, None. Reserve, \$750.00.
5/25/40	Carmin Pasquito, \$25,000.00	Liability, None. Reserve, \$200.00.
5/25/40	Wm. Tortelli, \$15,000.00	Liability, None. Reserve, \$250.00.
5/31/40	Milton West, \$3,000.00	Liability questionable. Reserve, \$125.00.
6/21/40	Sufran Monterola, \$2,000.00	Liability, Yes. Minor Injuries. Reserve, \$100.00.
6/21/40	Dorothy Monterola, \$2,500.00	Liability, Yes. Minor injuries. Reserve, \$300.00.
6/21/40	Sufran Monterola, Jr., \$3,500.00	Liability, Yes. Minor injuries. Reserve, \$200.00.
6/21/40	John C. Monterola, \$3,500.00	Liability, Yes. Minor injuries. Reserve, \$200.00.
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6/26/40	Raymond Laudes (Driver), \$10,000.00	Liability, Yes. Minor Injuries. Reserve \$500.00
6/26/40	Louise Sweeney, \$25,000.00	Liability, Yes. Serious Injuries. Reserve \$7,000.00 reasonably adequate. Reinsured over \$10,000.00.

1 Excess liability policy reinsures Consolidated Motor Lines liability over \$10,000 in each accident up to \$100,000/\$300,000.

## PENDING LITIGATION—continued.

Date of accident	Plaintiff and amount of suit	Remarks
6/26/40	John W. Sweeney, \$10,000.00 <sup>1</sup>	Liability, Yes. Reserve \$500.00.
8/17/40	Michael Jusko, \$2,500.00	Liability, None. Reserve, None.
8/17/40	John Jusko, \$12,500.00 <sup>1</sup>	Liability, None. Reserve, None.
8/17/40	Mary Jusko, \$1,000.00	Liability, None. Reserve, None.
8/17/40	Elizabeth Jusko, \$10,000.00 <sup>1</sup>	Liability, None. Reserve, None.
8/17/40	George Humenik, \$200.00	Liability, Possibly Yes. Minor Injuries. Reserve, \$100.00. Reserve, \$250.00.
10/19/40	Susana Lopez, \$115.50 (PD); \$15,000.00 (PI) <sup>1</sup>	Liability, Possibly Yes. Minor Injuries. Reserve, \$150.00.
10/19/40	Joseph Barrios (Driver), \$1,500.00	Liability questionable. Reserve, \$200.00.
339		Liability, None. Reserve, None.
1/ 3/41	Rosario Spinella, \$500.00	Liability, Yes. Reserve, \$505.00. Reasonably adequate.
2/10/41	Mitnick's Bakery, \$195.66	Liability very questionable. Reserve, \$100.00.
2/15/41	Longo's Express, \$2,000.00	Liability very questionable. Reserve, \$400.00.
3/ 1/41	Myra Walker (owner), \$1,000.00	Liability questionable. Reserve, \$25.00.
3/ 1/41	Harold Walker (Driver), \$50,000.00 <sup>1</sup>	Liability, None. Reserve, None.
3/ 1/41	Harry Walker, \$10,000.00 <sup>1</sup>	Liability, None. Reserve, None.
3/ 1/41	Harold Indursky, \$300.00	Liability, None. Reserve, None.
2/21/41	Raymond Clark (Minor), \$10,000.00 <sup>1</sup>	Liability, None. Reserve, None.
2/21/41	Walter Clark (Father), \$5,000.00	Liability, None. Reserve, None.
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3/17/41	Joseph George, \$3,000.00	Liability, questionable. Reserve, \$1,250.00.
5/ 5/41	Wm. Strevy (Owner). (Complaint with amount of suit not yet rec'd.)	Liability, None. Reserve, None.
5/ 5/41	Wilbur Borst (Operator). (Complaint with amount of suit not yet rec'd.)	Liability, None. Reserve, None.
6/ 4/39	Wilbert Rainville, \$25,000.00 <sup>1</sup>	Liability, Questionable. Reserve, \$500.00. (Compensation Case.)
9/9/39	Acadia Mfg. Supply Co., \$1,489.94	Liability very questionable. Reserve, \$1,489.94 (Cargo Claim).

<sup>1</sup> Excess liability policy reinsures Consolidated Motor Lines Liability over \$10,000 in each accident up to \$100,000/\$500,000.

## EXHIBIT I

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First Parties represent, warrant and agree that all items listed below were actually expended by or became accrued Liabilities of the company, named on Exhibit A annexed hereto during the twelve months period ending April 30, 1941 and that as to the items below under the column "Nonrecurring Items," neither said items nor any items similar or corresponding thereto will be or become, in whole or in part, obligations of said company at any time after the closing date of this agreement.

In consideration of the foregoing representations, warranties and agreements, it is agreed that in determining the amount of common stock of Second Party to be received by First Parties under subdivision (2) of paragraph Third of this agreement, the sum of \$57,347.16 shall be added to the adjusted net profits of said company as determined by Harry J. Reicher, less provision for taxes at the 1940 rates on the said sum of \$57,347.16.

## Nonrecurring Items:

- Professional Services:
  - To Coverdale & Colpitts ..... \$6,452.71
  - To Phoenix Securities Corporation ..... 5,000.00
- Bonuses to Officers and Employees ..... 45,894.45

## EXHIBIT J

It is mutually agreed that the company named on Exhibit A annexed hereto may, between April 30, 1941, and the closing date provided for in the annexed agreement, enter into lease agreements for terminals presently constructed or to be constructed in the future at or near Albany and Syracuse, New York; Philadelphia, Pennsylvania; and Waterbury, Connecticut, with such persons, firms, or corporations, in such locations either in or near said cities, for such periods of time, at such rentals, and on such other terms and conditions as the Board of Directors of said company shall authorize or approve; and in connection therewith and to assist in the construction of such terminals, or terminals may borrow such sums of money from any bank, individual, firm, or corporation, and advance to the lessors of such terminal all or part of the sums so borrowed, all in such amounts, at such times, and on such terms and conditions as may be authorized or approved by the Board of Directors of the company. It is not intended by the foregoing to imply, directly or indirectly, that the contemplated action above referred to, if taken, will not be in the ordinary course of business and for a reasonable consideration in the light of prevailing markets, within the meaning of paragraph Sixth of the annexed agreement.

It is further mutually understood and agreed that the company named on Exhibit A may, between April 30, 1941, and the closing date provided for in said agreement, purchase or otherwise acquire up to ninety (90) shares of its issued and outstanding capital stock at a price not to exceed Four Hundred (\$400.00) Dollars per share, provided that any amount so expended shall be deducted from the net worth of the company named on said Exhibit A, as determined in accordance with Article Third of this agreement.

The word "modified" as used in the concluding paragraph of paragraph Sixth of the annexed agreement shall be deemed to mean "waived in whole or in part."

The expression "main body of this agreement" in each of the two places where said expression appears in paragraph Eighteenth of the annexed agreement is deemed to include any exhibit or exhibits.

It is understood that B. M. Seymour has executed or is about to execute a subscription agreement for certain shares of the common stock of Second Party.

## EXHIBIT A

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named

hereon; that the ownership of said stock is accurately and truthfully listed hereon; that all of the issued shares of stock are fully paid and nonassessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments, or any other claims, except as may otherwise be stated hereon; that there are no agreements, either written or oral, concerning the sale, transfer or other disposition of any of said stock or concerning the voting rights or any other rights pertaining thereto, except as noted hereon; that each of First Parties is of lawful age, is both the legal and beneficial owner<sup>1</sup> of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement:

### MCCARTHY FREIGHT SYSTEM, INC.

(Name of Company)

MASSACHUSETTS  
(State of Incorporation)

Class of classes of stock	Total number of shares authorized
Preferred	1,000 shs. cumulative preferred stock of a par value of \$100 each authorized, but none outstanding.
Common	7,500 shs.

1 Names of First Parties	2 No. of shares of preferred stock owned	3 No. of shares of common stock owned	4 Percentage of total No. of preferred shares of Second Party <sup>1</sup> to be received <sup>2</sup>	5 Percentage of total No. of common shares of Second Party <sup>1</sup> to be received <sup>2</sup>
1. John J. McCarthy		2,335	31.1344%	31.1344%
2. George F. Bertucio		900	12%	12%
3. Charles F. McCarthy		665	8.8634%	8.8634%
4. Isabel J. McCarthy		1,000	13.14%	13.14%
5. Kathleen E. McCarthy		1,000	13.14%	13.14%
6. Alexander W. Chisholm and Edwin F. Weber, Trustees under Indenture of Trust dated June 6, 1940, for the Benefit of Elizabeth Jane Bertucio and Others		400	5.14%	5.14%
344 7. Alexander W. Chisholm and Edwin F. Weber, Trustees under Indenture of Trust dated June 6, 1940, for the Benefit of Mary Louise Bertucio and Others		400	5.14%	5.14%
8. Alexander W. Chisholm and Edwin F. Weber, Trustees under Indenture of Trust dated June 6, 1940, for the Benefit of Robert Charles Bertucio and Others		400	5.14%	5.14%
9. Alexander W. Chisholm and Edwin F. Weber, Trustees under Indenture of Trust dated June 6, 1940, for the Benefit of Louise M. Bertucio and Others		400	5.14%	5.14%
Total No. of shares issued and outstanding	None	7,500	100%	100%

<sup>1</sup> To be received by First Parties collectively.

<sup>2</sup> By this First Party.

<sup>3</sup> Except that shares herein indicated as held by Trustees are not beneficially owned by them.

345 As to all items: said shares of common stock of McCarthy Freight System, Inc., have applicable restrictions on transfer set forth in the minutes of stockholders and Directors of said company. All parties concerned are bound by agreement to waive such restrictions for the purpose of consummation of this agreement.

As to item 2: 250 of said shares are covered by an option dated August 1, 1938 to John J. McCarthy and Charles E. McCarthy jointly, and the survivor, and the executors, administrators, or assigns of such survivor. All parties concerned are bound by agreement to release said option for the purpose of consummation of this agreement.

As to the remaining 650 of the shares in item 2; and as to items 6, 7, 8, and 9: said shares are covered by an option dated June 6, 1940, to McCarthy Freight System, Inc., which is bound by agreement to release said option for the purpose of consummation of this agreement.

As to items 2, 6, 7, 8, and 9: these are, as to said shares of common stock (together with, as to (2) below only, certain dividends thereon as provided in outstanding dividend orders which all parties concerned are bound by agreement to release for the purpose of consummation of this agreement) of McCarthy Freight System, Inc., possible claims following: (1) Claims of creditors of The Byrolly Transportation Company and/or claims included in First Parties' letter of June 2, 1941, to Second Party; and (2) Claims of McCarthy Freight System, Inc., under its note dated August 1, 1938, as increased and/or decreased to date. McCarthy Freight System, Inc., is bound to release said collateral upon substitution of stock of Second Party upon  
346 consummation of this agreement.

As to each of items 6, 7, 8, and 9: upon the creation of the trust the Trustees thereunder acquired "All the right, title, and interest of George E. Bertucio in and to" the respectively above-listed 400 shares of common stock of McCarthy Freight System, Inc., and also 16 shares of common stock of Southern New England Terminals, Inc.

It is understood and agreed that the disclosures recited above shall not be deemed exceptions to the representations and warranties made in this Exhibit A.

George E. Bertucio agrees—notwithstanding the limitations of liability set forth in Paragraph Twelfth of the annexed agreement—to indemnify the Second Party against, and save the Second Party harmless from, any and all liens, encumbrances, pledges, attachments on, or any other claims with respect to, the stock listed in items 2, 6, 7, 8, and 9 of this Exhibit A.

First Parties represent and warrant that there are listed below a true, accurate, and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement, of all encumbrances and liens thereon, and of all real estate leased by said company, showing the location, monthly rentals, expiration dates, and other details with regard to such leased premises:

Location of property	Property	Owned or leased	Expiration date of lease	Monthly rental	Lessor	Encumbrances or liens	Amount as of 12/31/40
13 Leonard St., Albany, N. Y. Baltic Rd. and Ballard St., Worcester, Mass. 79 North St., Cambridge, Mass.	Terminal Terminal Terminal Terminal	Leased Owned Owned Owned	Tenant at will 12/31/50 At will At will	\$50.00 500.00 250.00 400.00	Commet's Garage Southern New England Terminals, Inc. (Constructed on leased land.) Brockton Ice and Coal Co. Southern New England Terminals, Inc. Hazard Coal Co. Mary Grace S. Bahren	Mortgage (Donald Finance Co.)	\$6,000.00
Rear 21-23 Lawrence St., Brockton, Mass. Wages and Olney Sts., Taunton, Mass. 145 Nye St., New Bedford, Mass. 501 Meriden Road, Waterbury, Conn. Rear 201 Columbus Ave., New Haven, Conn. 225 Waterview Ave., Bridgeport, Conn.	Terminal Terminal Terminal Terminal Terminal Terminal	Leased Leased Leased Leased Leased Leased	Tenant at will 7/31/43 7/31/41 12/31/41 At will	250.00 35.00 250.00 100.00 125.00	Southern New England Terminals, Inc. Mrs. Fannie Cohen Jacob Brothers, Inc.	Agreement to pay for playground constructed by lessor.	Due as of 5/17/41 \$750.00
4th St., Pittsfield, Mass. 60 Southeastside Plainfield St., Chicopee, Mass. 26 Memorial Ave., Springfield, Mass. 698 Rodman St., Fall River, Mass. 61 North Main St., Jewett City, Conn. Rear 126-7 Main St., East Hartford, Conn. Oak St., West of Bath St., Providence, R. I. 401 Broadway, New York City	Terminal Terminal Exec. Office Terminal Land and Terminal Terminal Sales Office	Leased Leased Tenant at will Tenant at will Owned Leased Leased	8/31/50 7/31/41 Tenant at will Tenant at will 9/30/49 30-day notice	600.00 300.00 40.00 50.00 70.00 833.33 30.00	Southern New England Terminals, Inc. Bausch Machine Tool Co. International Harvester Co. McKenzie-Winslow Mutch's Garage Southern New England Terminals, Inc. Metropolitan Life Insurance Company	Mortgage (East Hartford Trust Co.)	\$10,200.00

Location of property	Property	Owned or leased	Expiration date of lease	Monthly rental	Lessor	Encumbrances or liens	Amount as of 12/31/40
Boston & Albany R. R., North Adams, Mass.	Terminal	Leased	30-day notice	6.45	New York Central		
348 North Street, Cambridge, Mass.	Land	Leased	11/30/47	125.00	New York Central Railroad		
Boston & Albany R. R., Springfield, Mass.	Terminal	Leased	30-day notice	98.65	New York Central Railroad		
Boston & Albany R. R., Springfield, Mass.	Land	Leased	30-day notice	7.50	New York Central Railroad		
Albany & Casco St., Worcester, Mass.	Terminal	Leased	9/3/44	170.00	Nathan Dworman	(Subletted at \$125 a month)	

## EXHIBIT F

First Parties represent and warrant that the following is a true and complete list of all executory contracts, including but not limited to employment contracts, to which the company named on Exhibit A annexed hereto is a party, and which are in existence at the date of this agreement, and that said company has no other such contracts, except such as have been made in the ordinary course of business of the company and as are necessary or useful in the conduct of its business. First Parties further represent and warrant that all of the contracts listed thereon are considered advantageous to said company and are not unduly burdensome.

First Parties agree as to any contracts set forth below, which are identified by the word "out" and initialed by the designee of First Parties, and Second Party, that such contract will be eliminated as an obligation of said company on or before the closing date fixed in the annexed agreement.

Out—J. J. McC. 1. Employment Contract—John J. McCarthy and McCarthy Freight System, Inc.—August 1, 1938, as amended June 6, 1940.

Out—J. J. McC. 2. Employment Contract—Charles F. McCarthy and McCarthy Freight System, Inc.—August 1, 1938, as amended June 6, 1940.

Out—J. J. McC. 3. Employment Contract—George E. Bertuccio and McCarthy Freight System, Inc.—August 1, 1938, as amended June 6, 1940, and June 2, 1941.

4. Tank Wagon Consumers Contract dated October 1, 1939, between Socony-Vacuum Oil Company, Incorporated, and McCarthy Freight System, Inc.

5. Truck and Bus Lubricants Contract dated October 1, 1939, between Socony-Vacuum Oil Company, Incorporated, and McCarthy Freight System, Inc.

6. Guarantee dated September 7, 1939, by McCarthy Freight System, Inc., to Socony-Vacuum Oil Company, Incorporated.

7. Guarantee dated September 7, 1939, by McCarthy Freight System, Inc., to The First National Bank of Boston.

8. Guarantee by McCarthy Freight System, Inc., to mortgagee of Southern New England Terminals, Inc.'s, Pittsfield Terminal.

9. Arrangement under which McCarthy Freight System, Inc., deposited \$5,000 with Massachusetts Bonding and Insurance Company in connection with bond furnished under Connecticut Workmen's Compensation Act.

10. Labor Union Contracts.

11. Guarantee by McCarthy Freight System, Inc., to mortgagee of Southern New England Terminals, Inc.'s, Worcester Terminal.

12. Guarantee now being executed by McCarthy Freight System, Inc., to Ware Savings Bank, Ware, Mass.

13. Guarantee now being executed by McCarthy Freight System, Inc., to Home National Bank, Brockton, Mass.

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**EXHIBIT H**

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto,<sup>1</sup> nor is any such action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises or privileges null and void.

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**EXHIBIT**

First Parties represent, warrant, and agree that all items listed below were actually expended by or became accrued liabilities of the company named on Exhibit A annexed hereto during the twelve months' period ending April 30, 1941, and that as to the items below under the column "Nonrecurring Items," neither said items nor any items similar or corresponding thereto will be or become, in whole or in part, obligations of said company at any time after the closing date of this agreement.

In consideration of the foregoing representations, warranties, and agreements, it is agreed that in determining the amount of common stock of Second Party to be received by First Parties under subdivision (2) of paragraph Third of this agreement, the sum of \$16,832.50 shall be added to the adjusted net profits of said company as determined by Harry J. Reicher, less provision for taxes at the 1940 rates on the said sum of \$16,832.50.

**Nonrecurring Items:**

Bonuses

\$15,832.50

Legal Expense

1,000.00

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16,832.50

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**EXHIBIT J**

It is mutually agreed (as contemplated in and by paragraph Eighteenth as hereinafter modified) that the foregoing agreement (including exhibits) of which this exhibit is a part is changed,

<sup>1</sup> Except as now disposed of, or disclosed in Exhibit A, or fully covered by insurance.

and, to the extent hereinafter indicated the provisions thereof are superseded, as respectively set forth below:

**Paragraph Third:**

The date "May 31, 1941," in the second paragraph of this Paragraph is stricken out and the date "June 17, 1941," substituted therefor.

**Paragraph Sixth:**

1. So much of the first sentence of subdivision (3) of this Paragraph as follows the parenthetical clause therein is stricken out and there is substituted therefor the following: "Per week than being paid for the week ending February 1, 1941"; and there is added at the end of the second sentence of said subdivision the following: "except as disclosed in Exhibit F."

2. The word "modified" as used in the concluding paragraph of paragraph Sixth of the annexed agreement shall be deemed to mean "waived in whole or in part."

**Paragraph Eighteenth:**

The expression "main body of this agreement" in each of the two places where said expression appears in Paragraph Eighteenth of the annexed agreement is deemed to include any exhibit or exhibits.

**Additional:**

1. There is inserted an additional paragraph as follows: "Second Party hereby agrees that it will, on request of any one or more of First Parties within thirty days after the closing, cause  
353 said company named on Exhibit A hereto promptly to sell to such First Party or First Parties to the extent that he is or they are the person or persons on whose life or lives such policies have been issued; and at the respective book values thereof as of the date of sale as reflected on the books of said company, any or all of the life insurance policies, on the lives of any of said parties, at the time of closing on said closing date owned by said company; provided, further, that notwithstanding any contrary provisions of this agreement the First Parties may cause or permit said company to make any such sales on the same basis prior to said closing."

2. There is inserted an additional paragraph as follows: "Second Party hereby agrees that within one year after the closing under this agreement it will cause each of the First Parties to be released and discharged of and from any and all obligations and liabilities (whether direct or contingent) to any person or persons in respect of the following:

(1) Collateral note by McCarthy Freight System, Inc., to Donald Finance Co. (approximately \$5,400);

(2) Unsecured note by McCarthy Freight System, Inc., to Home National Bank of Brockton (approximately \$3,000);

and cause to be released to each of the First Parties any collateral of any nature respectively furnished by them and securing any of the foregoing and, between the time of closing under this agreement and such release and discharge of obligations and liabilities and such release of collateral, to indemnify and save harmless each of the First Parties of and from said obligations and liabilities and any expense and loss in connection therewith."

354 3. There is inserted an additional paragraph as follows:

"It is understood that B. M. Seymour has executed or is about to execute a subscription agreement for certain shares of the common stock of Second Party."

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#### EXHIBIT A

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named hereon; that the ownership of said stock is accurately and truthfully listed hereon; that all of the issued shares of stock are fully paid and nonassessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments or any other claims, except as may otherwise be stated hereon; that there are no agreements, either written or oral, concerning the sale, transfer, or other disposition of any of said stock or concerning the voting rights or any other rights pertaining thereto, except as noted hereon; that each of First Parties is of lawful age, is both the legal and beneficial owner of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement:

**M. MORAN TRANSPORTATION LINES, INC.**

(Name of Company)

**NEW YORK**

(State of Incorporation)

Class or classes of stock	Total number of shares authorized
Preferred.....	
Common.....	

1 Names of First Parties	2 Number of shares of preferred stock owned	3 Number of shares of common stock owned	4 Percentage of total number of preferred shares of Second Party to be received	5 Percentage of total number of common shares of Second Party to be received
Michael M. Moran Norman Joseph Amelia M. Moran Mamie Moran As Trustees: Michael M. Moran Norman Joseph Amelia M. Moran		250	To be supplied on or before closing date.	To be supplied on or before closing date.

Total number of shares issued and outstanding: 250 Common.

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**EXHIBIT E**

First Parties represent and warrant that there are listed below a true, accurate, and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement; of all encumbrances and liens thereon, and of all real estate leased by said company, showing the location, monthly rentals, expiration dates, and other details with regard to such leased premises:

Lessor	Location real estate leased	Expiration date	Monthly rental
American Radiator Company	22 Roseville St., Buffalo, N. Y.	7/31/43	\$600.00
New York Central Railroad Co.	242 Larkin St., Buffalo, N. Y.	Monthly	50.00
John Wyroski	17 Roseville St., Buffalo, N. Y.	Monthly	4.17
Flora Smith	111 No. Geddes St., Syracuse, N. Y.	1/31/45	625.00
Abe E. Nathan	11 and 14 Mart Pl., Roch., N. Y.	3/31/45	100.00
Milton Lifset	Chrysler & Hudson St., Schen., N. Y.	6/30/49	275.00
Ft. Erie Warehouse & Dock Co.	1220 Saxafras St., Erie, Pa.	Monthly	90.00
Louis Minsker	168 Hopkins St., Jamestown, N. Y.	Monthly	50.00
Nicola Dardano	625 Catherine St., Utica, N. Y.	Monthly	135.00
American Salesbook Co.	612 Magee St., Elmira, N. Y.	5/31/44	150.00
Michael M. Moran	105 Molomery St., Birmingham, N. Y.	11/1/50	400.00
J. J. & R. H. Greenberg	2640 E. Lehigh St., Philadelphia, Pa.	8/1/41	250.00
Torsney & Moloney	508 W. 40th St., New York	Monthly	300.00

**REAL ESTATE OWNED**

Property at 1206 River St., Olean, N. Y. purchased by Company in April 1941 and including improvements made or to be made will cost approximately \$12,000.00.

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**EXHIBIT H**

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far

as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto, nor is any such action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises, or privileges null and void.

Various claims all fully covered by insurance.

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### EXHIBIT J

1. It is mutually agreed by and between First Parties and Second Party that First Parties are to receive collectively, and Second Party is to issue in addition to all other common stock receivable by First Parties under the provisions of paragraphs third and fifth of the annexed agreement, twenty-nine thousand (29,000) shares of the common stock of Second Party.

2. Notwithstanding the provisions of subdivision (3) of paragraph sixth of the annexed agreement, it is expressly understood and agreed that Michael M. Moran and J. P. Altwater may, between April 30, 1941; and the closing date fixed in the annexed agreement, or the time of cancellation thereof as therein provided, continue to be paid salaries at the rates prevailing on November 1, 1940, with respect to each of them.

3. It is understood and agreed that the policies of life insurance covering any officer or stockholder of the company named on Exhibit A, which policies are payable to said company as beneficiary, will, upon request of the person or persons insured by said policies made within thirty (30) days after the closing date provided for in the annexed agreement, be transferred by Second Party to such person or persons upon receipt of the asset value of said policies as shown on the books of said company. It is further understood that prior to the closing date provided for in the annexed agreement, First Parties may cause the company named on said Exhibit A to transfer any such policy or policies on the same terms.

4. The word "modified" as used in the concluding paragraph of paragraph sixth of the annexed agreement shall be deemed to mean "waived in whole or in part."

5. The expression "main body of this agreement" in each of the two places where said expression appears in paragraph eighteenth of the annexed agreement is deemed to include any exhibit or exhibits.

6. It is understood that B. M. Seymour has executed or is about to execute a subscription agreement for certain shares of the common stock of Second Party.

## EXHIBIT A

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named hereon; that the ownership of said stock is accurately and truthfully listed hereon; that all of the issued shares of stock are fully paid and nonassessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments, or any other claims, except as may otherwise be stated hereon; that there are no agreements, either written or oral, concerning the sale, transfer, or other disposition of any of said stock or concerning the voting rights or any other rights pertaining thereto, except as noted hereon; that each of First Parties is of lawful age, is both the legal and beneficial owner of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement:

## SOUTHEASTERN MOTOR LINES, INCORPORATED

(Name of Company)

## VIRGINIA

(State of Incorporation)

Class or classes of stock				Total number of shares authorized
Preferred				None
Common				500

1	2	3	4	5
Names of First Parties	No. of shares of preferred stock owned	No. of shares of common stock owned	Percentage of total No. of preferred shares of Second Party to be received	Percentage of total No. of common shares of Second Party to be received
Clifford C. Brock	None	297.5	59.5%	59.5%
B. L. Huntsman	None	155	31.0%	31.0%
J. T. Howard	None	35	7.0%	7.0%
Vance P. Graham	None	12.5	2.5%	2.5%

Total No. of shares issued and outstanding, 500.

## EXHIBIT E

First Parties represent and warrant that there are listed below a true, accurate, and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement, of all encumbrances and liens thereon, and of

all real estate leased by said company, showing the location, monthly rentals, expiration dates, and other details with regard to such leased premises:

Location	List of leases—Rental	Maturity date
Howard Street, Boone, N. C.	\$30.00 per month.	May 1, 1946, option for additional five years.
68 Commonwealth Ave., Bristol, Virginia.	\$600.00 per year.	October 15, 1948, option for additional ten years.
310 Franklin Street, Nashville, Tennessee.	\$720.00 per year.	November 30, 1940, option for additional one year.
2 Mi. east of Salem, Virginia.	\$15.00 per month plus 10% per annum for improvements (now \$22.00 per month).	April 1, 1945.
715 Chamberlain St., Knoxville, Tenn.	\$50.00 per month.	No written lease.
Winston-Salem, North Carolina.	\$12.50 per week.	Union Motor Freight Terminal no written lease.
406-12 West 29th St., New York City.	\$600.00 per month.	June 1, 1946.

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## EXHIBIT F

First Parties represent and warrant that the following is a true and complete list of all executory contracts, including but not limited to employment contracts, to which the company named on Exhibit A annexed hereto is a party, and which are in existence at the date of this agreement, and that said company has no other such contracts, except such as have been made in the ordinary course of business of the company and as are necessary or useful in the conduct of its business. First Parties further represent and warrant that all of the contracts listed thereon are considered advantageous to said company and are not unduly burdensome.

First Parties agree as to any contracts set forth below, which are identified by the word "out" and initialed by the designee of First Parties, and Second Party, that such contract will be eliminated as an obligation of said company on or before the closing date fixed in the annexed agreement.

Contracts with White Motor Truck Co. and The Fruhoff Trailer Co. for the purchase of tractors and trailers not exceeding the sum of \$16,000.

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## EXHIBIT H

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto, nor is any such

action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises, or privileges null and void.

**Suits pending:**

Gertrude Taylor Jones v. Southeastern Motor Lines, Incorporated, suit pending in Circuit Court of Montgomery County, Virginia	\$10,000.00
C. T. Flowers v. Southeastern Motor Lines, Incorporated, suit pending in the Circuit Court of Montgomery County, Virginia	418.92
Grace Jackson Flowers v. Southeastern Motor Lines, Incorporated, suit pending in the Circuit Court of Montgomery County, Virginia	10,000.00

All of the above are fully protected by insurance as set forth in Exhibit G.

The operating rights of Southeastern Motor Lines, Incorporated, between Knoxville, Tennessee, and Nashville, Tennessee, have not as yet been approved by the Interstate Commerce Commission.

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### EXHIBIT I

First Parties represent, warrant, and agree that all items listed below were actually expended by or became accrued liabilities of the company named on Exhibit A annexed hereto during the twelve months' period ending April 30, 1941, and that as to the items below under the column "Nonrecurring Items," neither said items nor any items similar or corresponding thereto will be or become, in whole or in part, obligations of said company at any time after the closing date of this agreement.

In consideration of the foregoing representations, warranties, and agreements, it is agreed that in determining the amount of common stock of Second Party to be received by First Parties under subdivision (2) of paragraph Third of this agreement, the sum of \$15,475.00 shall be added to the adjusted net profits of said company as determined by Harry J. Reicher, less provision for taxes at the 1940 rates on the said sum of \$15,475.00.

**Nonrecurring Items:**

1. Extraordinary legal fees	\$4,000.00
2. Bonuses to employees and officers	11,475.00

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### EXHIBIT J

First parties have asserted, and second party recognizes that the cost to the company named on Exhibit A of substantial portions of the equipment presently owned by that company is below the fair market value thereof, and accordingly the net worth of said company as shown by its books is less, insofar as said equipment is concerned, than its true net worth. It is accordingly expressly understood and agreed that First Parties are to receive

collectively and Second Party is to issue in addition to all other common stock receivable by said First Parties under the provisions of paragraphs Third and Fifth of the annexed agreement, two thousand (2,000) shares of the common stock of Second Party.

In view of the foregoing, it is further expressly understood and agreed that no adjustments with regard to depreciation on the revenue equipment (trucks, trailers, and tractors) of the company named on Exhibit A shall be made in determining either the adjusted net worth or the adjusted net profits of said company.

The word "modified" as used in the concluding paragraph of paragraph Sixth of the annexed agreement shall be deemed to mean "waived in whole or in part."

The expression "main body of this agreement" in each of the two places where said expression appears in paragraph Eighteenth of the annexed agreement is deemed to include any exhibit or exhibits.

It is understood that B. M. Seymour has executed or is about to execute a subscription agreement for certain shares of the common stock of Second Party.

NOTE.—The insurance carried and paid for by Southeastern Motor Lines, Incorporated, on the life of Clifford C. Brock, may at any time, at his election, be taken over for his sole benefit upon paying to the company named on Exhibit A the cash surrender value of the policy or policies, as the case may be, as of the time such taking over occurs.

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## -23- EXHIBIT A

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named hereon; that the ownership of said stock is accurately and truthfully listed hereon; that all of the issued shares of stock are fully paid and nonassessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments, or any other claims, except as may otherwise be stated hereon; that there are no agreements, either written or oral, concerning the sale, transfer, or other disposition of any of said stock or concerning the voting rights or any other rights pertaining thereto, except as noted hereon; that each of First Parties is of lawful age, is both the legal and beneficial owner of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement:

## TRANSPORTATION, INCORPORATED

(Name of Company)

## GEORGIA

(State of Incorporation)

Class or classes of stock				Total number of shares authorized
Preferred				25,000
Common				
1	2	3	4	5
Names of First Parties	No. of shares of preferred stock owned	No. of shares of common stock owned	Percentage of total No. of preferred shares of Second Party to be received	Percentage of total No. of common shares of Second Party to be received
A. S. Clay, Trustee		25,000 common		100%

Total No. of shares issued and outstanding, 25,000 Common.

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## EXHIBIT E

First Parties represent and warrant that there are listed below a true, accurate, and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement, of all encumbrances and liens thereon, and of all real estate leased by said company, showing the location, monthly rentals, expiration dates, and other details with regard to such leased premises:

## NO REAL ESTATE OWNED

Lease contract—Name	Location	Monthly rental	Expiration date
Rankin-Whitten	Atlanta, Ga	\$155.00	6/30/42
Pittman Const. Co.	" "	200.00	90 days
Georgia Motor Express	" "	100.00	10 days
Centennial Realty Co.	New Orleans, La.	70.00	6/30/41
J. W. Milner	Gulfport, Miss.	35.00	8/30/41
Pascagoula Ice & Coal Co.	Pascagoula, Miss.	50.00	3/20/42
Forman & Foreman Co.	Mobile, Ala.	75.00	10/31/41
Citizens & Peoples National Bank	Pensacola, Fla.	45.00	90 days
Bernice Stanton	Flomaton, Ala.	30.00	11/30/42
M. D. Taylor	Andalusia, Ala.	25.00	3/31/43
Crampton Lbr. Co.	Montgomery, Ala.	70.00	8/26/42
E. A. Screws	Opelika, Ala.	20.00	No Lease
L. L. Echols	Greenville, S. C.	100.00	4/1/43
C. W. Johnson	Spartanburg, S. C.	45.00	3/19/43
Barnwell Bros.	Charlotte, N. C.	100.00	10/7/41
R. L. Brinson	High Point, N. C.	40.00	No Lease
Revolution Cotton Mills	Greensboro, N. C.	100.00	12/31/41
Motor Transit	Winston-Salem, N. C.	40.00	30 Days
Pure Oil Co.	Asheville, N. C.	175.00	5/1/42
Charles Hickey	Knoxville, Tenn.	80.00	30 Days
J. P. Upchurch	Atlanta, Ga.	50.00	60 Days
Pure Oil Co. of Carolina	Gastonia, N. C.	60.00	3/21/42
Cannon Bros.	Dillsboro, N. C.	10.00	30 Days
Kingsport Transfer Co.	Kingsport, Tenn.	15.00	10 Days
Parts & Service Co.	Anderson, S. C.	15.43	No Lease
J. H. Service	Gaffney, S. C.	12.50	No Lease
G. W. Woodruff	Winder, Ga.	12.50	90 Days
Peoples Transfer Co.	Johnson City, Tenn.	7.50	No Lease
G. C. Steindorf	Georgiana, Ala.	10.00	90 Days

## EXHIBIT H

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto, nor is any such action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises, or privileges null and void.

Caldwell & Cartuathan v. Transportation, Inc. U. S. Dist. Court, Montgomery, Ala. (Wages & Hours) (No Liability believed to exist).

Barker v. Pittmann (Recovery should not exceed \$1,000). Circuit Courts of Alabama.

Claims not listed are fully covered by insurance.

## EXHIBIT J

1. First Party and Second Party have agreed that the application of the provisions of paragraph Third of the annexed contract would not result in the issuance to First Party of any shares of preferred stock of Second Party and would not result in the issuance to First Party of a number of shares of common stock which would fairly represent the earning capacity of the company named on Exhibit A annexed hereto. It is accordingly expressly understood and agreed that paragraphs Third (except as provided in subdivision 2 of this Exhibit J) and Fourth are hereby deleted, and First Party agrees to exchange all of the issued and outstanding capital stock shown on Exhibit A for a total of 5,500 shares of common stock of Second Party, to be issued to such persons and in such amounts as the Second Party shall be directed by the persons for whom the First Party is acting, such direction over the signatures of such persons to be furnished by the First Party within sixty days after execution and delivery of this agreement. All of said 5,500 shares are to be fully paid, nonassessable, and free and clear of any and all liens and encumbrances whatsoever. Wherever in the annexed agreement reference is made to paragraph Third or any part thereof, said reference shall be deemed to be to the provisions of this Exhibit J.

2. It is hereby represented that the net deficit of the company, excluding all values for intangibles, as of April 30, 1941, is \$40,000. The books of the company are to be audited in accordance with the provisions of paragraph Third where applicable, and if upon such

audit it should be found that the net deficit is either increased or decreased by more than \$5,000, less or additional common stock shall be delivered to the First Party of a par value equal to 5% of the amount by which such increase or decrease exceeds \$5,000.

3. It is agreed by the First Party that he will secure an extension of the payment of any remaining balance of any unsecured debt which is now and has been due and owing for a period of six months or longer and which is in the amount of \$5,000 or more, for a period of six months from the closing date of this agreement as defined in paragraph Fifteenth, and the First Party agrees to furnish written commitments to this effect from the creditors to whom such debts are owing within sixty days following the date of the execution of this agreement.

4. As an exception to the provisions of paragraph (3) of paragraph Sixth, the First Party may continue in its employ W. P. Moore, who has been in the employ of the company for a period of less than six weeks and who is now an officer. Said employee and officer shall be employed on a monthly basis only and shall receive a salary not exceeding \$400 monthly.

5. The word "modified" as used in the concluding paragraph of paragraph Sixth of the annexed agreement shall be deemed to mean "waived in whole or in part."

6. The expression "main body of this agreement" in each of the two places where said expression appears in paragraph Eighteenth of the annexed agreement is deemed to include any exhibit or exhibits.

7. It is understood that B. M. Seymour has executed or is about to execute a subscription agreement for certain shares of the common stock of Second Party.

369 8. The audit provided for in subdivision (2) of this Exhibit J shall be made by Harry J. Reicher, and his findings shall be final and conclusive on all parties hereto, unless within fifteen (15) days after mailing of said findings by Harry J. Reicher to the designee provided for herein, said designee shall mail to all of the designees under the contracts described in paragraph Fourteenth hereof, at the addresses set forth in their respective contracts, notice that he disputes said determinations, or any of them, with a statement of his reasons therefor, and unless two-thirds of all said designees, including the one provided for herein, shall revise the determinations, or any of them, made by Harry J. Reicher and mail notice of their action to the designee provided for herein. Should at least two-thirds of said designees fail to meet, hear, and reach a vote upon such disputed determinations within fifteen days after such notice of dispute is mailed to them, performance of this agreement shall, upon the written election of First Parties, be suspended until at least two-thirds

of said designees shall have met, heard the dispute with regard to such determinations, and reached a vote thereon; but all determinations by Harry J. Reicher shall remain in force unless upon such vote it is revised by the vote of two-thirds of all said designees, including the one provided for herein. If such determinations, or any of them, are revised by two-thirds of said designees, such revision shall, insofar as it affects and with respect to the items so affected, supersede his determinations and shall be final, binding, and conclusive on all parties, unless within ten days after such revision, the designee provided for herein shall elect to accept the original determinations by Harry J. Reicher, in which event said original determinations shall be final, binding, and conclusive on all parties.

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## EXHIBIT A

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named hereon; that the ownership of said stock is accurately and truthfully listed hereon; that all of the issued shares of stock are fully paid and nonassessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments, or any other claims, except as may otherwise be stated hereon; that there are no agreements, either written or oral, concerning the sale, transfer, or other disposition of any of said stock or concerning the voting rights or any other rights pertaining thereto, except as noted hereon; that each of First Parties is of lawful age, is both the legal and beneficial owner of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement. (See "Note 1" at the end of Exhibit A.)

## BARNWELL WAREHOUSE AND BROKERAGE CO.

(Name of Company)

## NORTH CAROLINA

(State of Incorporation)

Class or classes of stock	Total number of shares authorized
Preferred, Par Value, \$100.00	
Common, Par Value, \$100.00	500

1 Names of First Parties	2 No. of shares of preferred stock owned	3 No. of shares of common stock owned	4 Percentage of total No. of preferred shares of Second Party to be received	5 Percentage of total No. of common shares of Second Party to be received
R. W. Barnwell	12	1	5.04	5
Willard Smith Barnwell	84	1	10.22	5
John H. Barnwell		1	4.18	5
Deloria Morrow Barnwell	36	1	6.76	5
James A. Barnwell	48	2	11.79	10
Hannah Bomse		2	8.37	10
William R. Lacey	48	1	7.62	5
Arthur D. Crowe		1	4.18	5
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Willard Holt Barnwell		1	4.18	5
371 Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Joseph Clarendon Barnwell		1	4.18	5
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Eleanor Smith Barnwell		1	4.19	5
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Betty Lynn Barnwell		1	4.19	5
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Richard Brantley Barnwell		1	4.19	5
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Julian Forrest Barnwell		1	4.19	5
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Dorothy Lea Barnwell		2	8.37	10
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Robert Alexander Barnwell		2	8.37	10
Total No. of shares issued and outstanding	228	30		

NOTE NO. 1.—The trustee in each of the eight trusts listed on this Exhibit A is the legal owner of record of the respective shares indicated and is empowered to dispose of the same as provided herein but is not the beneficial owner.

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## EXHIBIT E

First Parties represent and warrant that there are listed below a true, accurate, and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement, of all encumbrances and liens thereon, and of all real estate leased by said company, showing the location, monthly rentals, expiration dates, and other details with regard to such leased premises:

	Total cost	Res. for depreci.	Book value	Incumbrances or liens	
				Amount	Description
Real estate owned					
Burlington	\$15,476.08	\$1,304.54	\$14,271.55	\$10,500.00	Mortgage
Real Estate Leased					
None					

## EXHIBIT F

First Parties represent and warrant that the following is a true and complete list of all executory contracts, including but not limited to employment contracts, to which the company named on Exhibit A annexed hereto is a party, and which are in existence at the date of this agreement, and that said company has no other such contracts, except such as have been made in the ordinary course of business of the company and as are necessary or useful in the conduct of its business. First Parties further represent and warrant that all of the contracts listed thereon are considered advantageous to said company and are not unduly burdensome.

First Parties agree as to any contracts set forth below, which are identified by the word "out" and initialed by the designee of First Parties, and Second Party, that such contract will be eliminated as an obligation of said company on or before the closing date fixed in the annexed agreement.

The company named on Exhibit A has no executory contracts except with its employees, none of which extend beyond December 31, 1941.

## EXHIBIT H

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto, nor is any such action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises, or privileges null and void.

So far as known to first parties, there is no pending or threatened litigation against the company named on Exhibit A.

## EXHIBIT J

1. In lieu of applying the provisions of paragraph Third of the annexed contract to determine the number of shares of common and preferred stock of Second Party to be received by First Parties collectively, it is understood and agreed that First Parties are to receive collectively in exchange for all of the issued and outstanding capital stock shown on Exhibit A annexed hereto of the company named on said Exhibit, 1,390 shares of the preferred stock and 17,800 shares of the common stock of Second Party.

All of said shares, both preferred and common, are to be fully paid and nonassessable, and free and clear of any and all liens and encumbrances whatsoever. The provisions of paragraph Fourth of the annexed agreement shall apply to the distribution of the aforesaid preferred and common stock.

It is further understood and agreed that after audit of the books and records of the company named on Exhibit A by Harry J. Reicher (to be completed as soon after the execution hereof as practicable), the total number of shares of preferred stock to be received by First Parties collectively as stated above, may be increased or decreased by Harry J. Reicher up to 25% more or 25% less than the total stated above, and the number of common shares to be received by First Parties collectively as stated above, may likewise be increased or decreased by Harry J. Reicher within the same limits. Such increase or decrease of the total number of preferred or common shares, or both, shall become effective upon the mailing by Harry J. Reicher of notice thereof to the designees provided for in the main agreement.

The determination by Harry J. Reicher as to whether or not the total number of preferred shares and common shares stated above, or either or both, shall be increased or decreased within the limits above provided, shall be made by Harry J. Reicher in his sole discretion, and shall be conclusive and binding upon all parties hereto.

2. Wherever reference is made in paragraph Twelfth of the annexed agreement to the provisions of the main agreement as to designee, such reference shall include reference to the provisions of Exhibit J of the main agreement on that subject.

3. The word "modified" as used in the concluding paragraph of paragraph Sixth of the annexed agreement shall be deemed to mean "waived in whole or in part."

4. The expression "main body of this agreement" in each of the two places where said expression appears in paragraph Sixteenth of the annexed agreement is deemed to include any exhibit or exhibits.

5. It is understood that B. M. Seymour has executed, or is about to execute, a subscription agreement for certain shares of the common stock of Second Party.

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## EXHIBIT A

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named hereon; that the ownership of said stock is accurately and

truthfully listed hereon; that all of the issued shares of stock are fully paid and nonassessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments, or any other claims, except as may otherwise be stated hereon; that there are no agreements, either written or oral, concerning the sale, transfer, or other disposition of any of said stock or concerning the voting rights or any other rights pertaining thereto, except as noted hereon; that each of First Parties is of lawful age, is both the legal and beneficial owner of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement:

## BROWN EQUIPMENT &amp; MFG. COMPANY, INC.

(Name of Company)

## NORTH CAROLINA

(State of Incorporation)

Class or classes of stock	Total number of shares authorized
Preferred	
Common	1,000

1 Names of First Parties	2 No. of shares of preferred stock owned	3 No. of shares of common stock owned	4 Percentage of total No. of preferred shares of Second Party to be received	5 Percentage of total No. of common shares of Second Party to be received
H. D. Horton		975 <sup>1</sup> / <sub>200</sub>	100%	100%
J. A. Sutton		4 <sup>1</sup> / <sub>200</sub>		
J. L. Brown		4 <sup>1</sup> / <sub>200</sub>		
J. N. Johnson		4 <sup>1</sup> / <sub>200</sub>		
J. D. Kluttz		4 <sup>1</sup> / <sub>200</sub>		
C. A. Cochran		4 <sup>1</sup> / <sub>200</sub>		

Total No. of shares issued and outstanding, 1,000

These shares of stock have been endorsed in blank to Mr. H. D. Horton.

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## EXHIBIT E

First Parties represent and warrant that there are listed below a true, accurate, and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement, of all encumbrances and liens thereon, and of all real estate leased by said company, showing the location, monthly rentals, expiration dates, and other details with regard to such leased premises:

278 **BROWN EQUIPMENT AND MANUFACTURING COMPANY,  
INCORPORATED**

**SCHEDULE OF LEASES APRIL 30, 1941**

Location	Street address	Lessor	Lessor's address	Monthly rental	Expiration date
Charlotte, N. C.	801-S. Summit Ave	Conner Realty Company.	Charlotte, N. C.	\$300.00	8-31-44

Remarks: Agreement in Lease to extend expiration date beyond 5-year period for such additional time as is necessary to complete addition to building.

(Initialed:) HDH.

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**EXHIBIT H**

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto, nor is any such action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises, or privileges null and void.

**NONE**

Any actions, if any, not listed, are fully covered by insurance.

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**EXHIBIT I**

**BROWN EQUIPMENT & MFG. COMPANY, INC.**

First Parties represent, warrant and agree that all items listed below were actually expended by, or became accrued liabilities of, the company named on Exhibit A annexed hereto during the twelve months' period ending April 30, 1941, and that as to the items below under the column "Nonrecurring Items," neither said items nor any items similar or corresponding thereto will be or become, in whole or in part, obligations of said company at any time after the closing date of this agreement.

In consideration of the foregoing representations, warranties, and agreements, it is agreed that in determining the amount of common stock of Second Party to be received by First Parties

under subdivision (2) of paragraph Third of this agreement, the sum of \$2,000,000 shall be added to the adjusted net profits of said company as determined by Harry J. Reicher, less provision for taxes at the 1940 rates on the said sum of \$2,000.00.

**Nonrecurring Item:**

1. Cost of dye written off ----- \$2,000.00

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**EXHIBIT J**

The word "modified" as used in the concluding paragraph of paragraph Sixth of the annexed agreement shall be deemed to mean "waived in whole or in part."

The expression "main body of this agreement" in each of the two places where said expression appears in paragraph Sixteenth of the annexed agreement is deemed to include any exhibit or exhibits.

H. D. Horton represents and warrants that he is the owner and holder of the share of stock listed on Exhibit "A" under the name of J. N. Johnson.

It is understood that B. M. Seymour has executed or is about to execute a subscription agreement for certain shares of the common stock of Second Party.

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**EXHIBIT A**

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named hereon; that the ownership of said stock is accurately and truthfully listed hereon; that all of the issued shares of stock are fully paid and nonassessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments, or any other claims, except as may otherwise be stated hereon; that there are no agreements, either written or oral, concerning the sale, transfer, or other disposition of any of said stock or concerning the voting rights or any other rights pertaining thereto, except as noted hereon; that each of First Parties is of lawful age, is both the legal and beneficial owner<sup>1</sup> of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement:

<sup>1</sup> Except that shares herein indicated as held by Trustees are not beneficially owned by them.

SOUTHERN NEW ENGLAND TERMINALS, INC.  
(Name of Company)MASSACHUSETTS  
(State of Incorporation)

Class or classes of stock	Total number of shares authorized
Preferred.....	300
Common.....	

1 Names of First Parties	2 No. of shares of preferred stock owned	3 No. of shares of common stock owned	4 Percentage of total No. of preferred shares of Second Party <sup>1</sup> to be received <sup>2</sup>	5 Percentage of total No. of common shares of Second Party <sup>1</sup> to be received <sup>2</sup>
1. Isabel J. McCarthy		134	44 <sup>2</sup> / <sub>3</sub> %	44 <sup>2</sup> / <sub>3</sub> %
2. Kathleen E. McCarthy		96	22 <sup>2</sup> / <sub>3</sub> %	22 <sup>2</sup> / <sub>3</sub> %
3. George E. Bertucio		36	12%	12%
4. Alexander W. Chisholm and Edwin F. Weber, Trustees under Indenture of Trust dated June 6, 1940, for the Benefit of Elizabeth Jane Bertucio and Others		16	5 <sup>1</sup> / <sub>3</sub> %	5 <sup>1</sup> / <sub>3</sub> %
5. Alexander W. Chisholm and Edwin F. Weber, Trustees under Indenture of Trust dated June 6, 1940, for the Benefit of Mary Louise Bertucio and Others		16	5 <sup>1</sup> / <sub>3</sub> %	5 <sup>1</sup> / <sub>3</sub> %
343 6. Alexander W. Chisholm and Edwin F. Weber, Trustees under Indenture of Trust dated June 6, 1940, for the Benefit of Robert Charles Bertucio and Others		16	5 <sup>1</sup> / <sub>3</sub> %	5 <sup>1</sup> / <sub>3</sub> %
7. Alexander W. Chisholm and Edwin F. Weber, Trustees under Indenture of Trust dated June 6, 1940, for the Benefit of Louise M. Bertucio and Others		16	5 <sup>1</sup> / <sub>3</sub> %	5 <sup>1</sup> / <sub>3</sub> %
Total No. of shares issued and outstanding	None	300	100%	100%

<sup>1</sup> To be received by First Parties collectively.<sup>2</sup> By this First Party.

384 As to all items: said shares of common stock of Southern New England Terminals, Inc., have applicable restrictions on transfer set forth in the minutes of stockholders and Directors of said company. All parties concerned are bound by agreement to waive such restrictions for the purpose of consummation of this agreement.

As to item 3: 19 of said shares are covered by an option dated August 22, 1939, to John J. McCarthy and Charles F. McCarthy, jointly, and the survivor, and the executors, administrators, or assigns of such survivor. All parties concerned are bound by agreement to release said option for the purpose of consummation of this agreement.

As to the remaining 26 of the shares in item 3, and as to items 4, 5, 6, and 7: said shares are covered by an option dated June 6, 1940, to Southern New England Terminals, Inc., which is bound

by agreement to release said option for the purpose of consummation of this agreement.

As to items 3, 4, 5, 6, and 7: there are, as to said shares of common stock (together with certain dividends thereon as provided in outstanding dividend orders which all parties concerned are bound by agreement to release for the purpose of consummation of this agreement) of Southern New England Terminals, Inc., possible claims following: Claims of McCarthy Freight System, Inc., under its note dated August 1, 1938, as increased and/or decreased to date. McCarthy Freight System, Inc., is bound to release said collateral upon substitution of stock of Second Party upon consummation of this agreement.

As to each of items 4, 5, 6, and 7: upon the creation of the trust the Trustees thereunder acquired "All the right, title, and interest of George E. Bertucio in and to" the respectively above-listed 16 shares of common stock of Southern New England Terminals, Inc., and also 400 shares of common stock of McCarthy Freight System, Inc.

It is understood and agreed that the disclosures recited above shall not be deemed exceptions to the representations and warranties made in this Exhibit A.

George E. Bertucio agrees—notwithstanding the limitations of liability set forth in Paragraph Eleventh of the annexed agreement—to indemnify the Second Party against, and save the Second Party harmless from, any and all liens, encumbrances, pledges, attachments on, or any other claims with respect to, the stock listed in items 2, 6, 7, 8, and 9 of this Exhibit A.

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## EXHIBIT E

First Parties represent and warrant that there are listed below a true, accurate, and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement, of all encumbrances and liens thereon, and of all real estate leased by said company, showing the location, monthly rentals, expiration dates, and other details with regard to such leased premises:

## OWNED

Location of property	Property	Description	Encumbrances or liens	Amount as 12/31/40
Olney and Wales Sts., Taunton, Mass.	Land and Building	General offices and Terminal	Mortgage	\$18,000.00
Baltic Road & Ballard St., Worcester, Mass.	Land and Building	Terminal	Mortgage	32,000.00
4th St., Pittsfield, Mass.	Land and Building	Terminal	Mortgage	28,500.00
Oak St., West of Bath St., Providence, R. I.	Land and Building	Terminal	Mortgages	41,999.96
Memorial Ave., West Springfield, Mass.	Land			

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## EXHIBIT F

First Parties represent and warrant that the following is a true and complete list of all executory contracts, including but not limited to employment contracts, to which the company named on Exhibit A annexed hereto is a party, and which are in-existence at the date of this agreement, and that said company has no other such contracts, except such as have been made in the ordinary course of business of the company and as are necessary or useful in the conduct of its business. First Parties further represent and warrant that all of the contracts listed thereon are considered advantageous to said company and are not unduly burdensome.

First Parties agree as to any contracts set forth below, which are identified by the word "out" and initialed by the designee of First Parties, and Second Party, that such contract will be eliminated as an obligation of said company on or before the closing date fixed in the annexed agreement.

1. Construction contract between Southern New England Terminals, Inc., and Walter H. Barker, Inc., executed February 18, 1941, for general offices at Taunton, Mass.

2. Construction contract between Southern New England Terminals, Inc., and Ernest J. Carlson, Inc., for Springfield Terminal executed May 23, 1941; also obligation for architect's fees in this connection.

3. Agreement to purchase house and lot on Livingston Ave., Pittsfield, Mass., by the Southern New England Terminals, Inc.

4. Agreement to purchase house and lot on New Hampshire Ave., Pittsfield, Mass., by the Southern New England Terminals, Inc.

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## EXHIBIT H

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto, nor is any such action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises, or privileges null and void.

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## EXHIBIT I

First Parties represent, warrant, and agree that all items listed below were actually expended by or became accrued liabilities of

<sup>1</sup> Except as now disposed of, or fully covered by insurance.

the company named on Exhibit A annexed hereto during the twelve months' period ending April 30, 1941, and that as to the items below under the column "Nonrecurring Items," neither said items nor any items similar or corresponding thereto will be or become, in whole or in part, obligations of said company at any time after the closing date of this agreement.

In consideration of the foregoing representations, warranties, and agreements, it is agreed that in determining the amount of common stock of Second Party to be received by First Parties under subdivision (2) of paragraph Third of this agreement, the sum of \$3,000.00 shall be added to the adjusted net profits of said company as determined by Harry J. Reicher, less provisions for taxes at the 1940 rates on the said sum of \$3,000.00.

Nonrecurring Items:

Officers' Bonuses

\$3,000.00

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#### EXHIBIT J

It is mutually agreed (as contemplated in and by Paragraph Sixteenth as hereinafter modified) that the foregoing agreement (including exhibits) of which this exhibit is a part is changed, and, to the extent hereinafter indicated the provisions thereof are superseded, as respectively set forth below:

#### Paragraph Third:

The date "May 31, 1941," in the second paragraph of this Paragraph is stricken out and the date "June 17, 1941" substituted therefor.

#### Paragraph Sixth:

The word "modified" as used in the concluding paragraph of Paragraph Sixth of the annexed agreement shall be deemed to mean "waived in whole or in part."

#### Paragraph Sixteenth:

The expression "main body of this agreement" in each of the two places where said expression appears in Paragraph Sixteenth of the annexed agreement is deemed to include any exhibit or exhibits.

#### Additional:

1. There is inserted an additional paragraph as follows: "Second Party hereby agrees that within one year after the closing under this agreement it will cause each of the First Parties to be released and discharged of and from any and all obligations and liabilities (whether direct or contingent) to any person or persons in respect of the following:

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(1) Second mortgage note dated September 7, 1939, by McCarthy Freight System, Inc., to Socony-Vacuum Oil Company, Incorporated (approximately \$15,000).

(2) First mortgage note dated September 7, 1939, by McCarthy Freight System, Inc., to The First National Bank of Boston (approximately \$22,500).

and cause to be released to each of the First Parties any collateral of any nature respectively furnished by them and securing any of the foregoing and, between the time of closing under this agreement and such release and discharge of obligations and liabilities and such release of collateral, to indemnify and save harmless each of the First Parties of and from said obligations and liabilities and any expense and loss in connection therewith."

2. There is inserted an additional paragraph as follows: "It is understood that B. M. Seymour has executed or is about to execute a subscription agreement for certain shares of the common stock of Second Party."

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## EXHIBIT C-1c

STATEMENT CONTAINING COPY OR EXPLANATION OF ANY OTHER MATERIAL DIFFERENCES BETWEEN THE AFORESAID HORTON AND CONGER CONTRACTS AND THE CONTRACTS OF ANY OTHER OF THE AFORESAID CARRIER AND NONCARRIER COMPANIES

Except as set forth in Exhibit C-1b herein, or otherwise set forth in this application, the only material differences between the aforesaid Horton and Conger contracts and the contracts of any other of the aforesaid carrier and noncarrier companies are as follows:

With regard to Exhibit B of said contracts, relating to interests in any other motor, rail, or water carrier, the stockholders of M. Moran Transportation Lines, Inc., represent and warrant that they have no interest, direct or indirect, in any other motor, rail, or water carrier except the following companies:

Pacific Transportation Lines, Inc.

Dregalla Trucking Co.

Frontier Package Delivery Inc.

With regard to Exhibit G of said contracts, relating to the insurance coverage of the various companies, the kind and amount of coverage vary for the different companies, but in every instance the nature and amount fully comply with the requirements of the Commission, and certificates of such coverage are on file with the Commission.

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## EXHIBIT C-3

## OPINION OF COUNSEL

It is the opinion of the undersigned counsel that the proposed transactions described in the within application comply with the

requirements of law and will be legally authorized and valid if approved by the Commission.

CLAUDE A. COCHRAN.

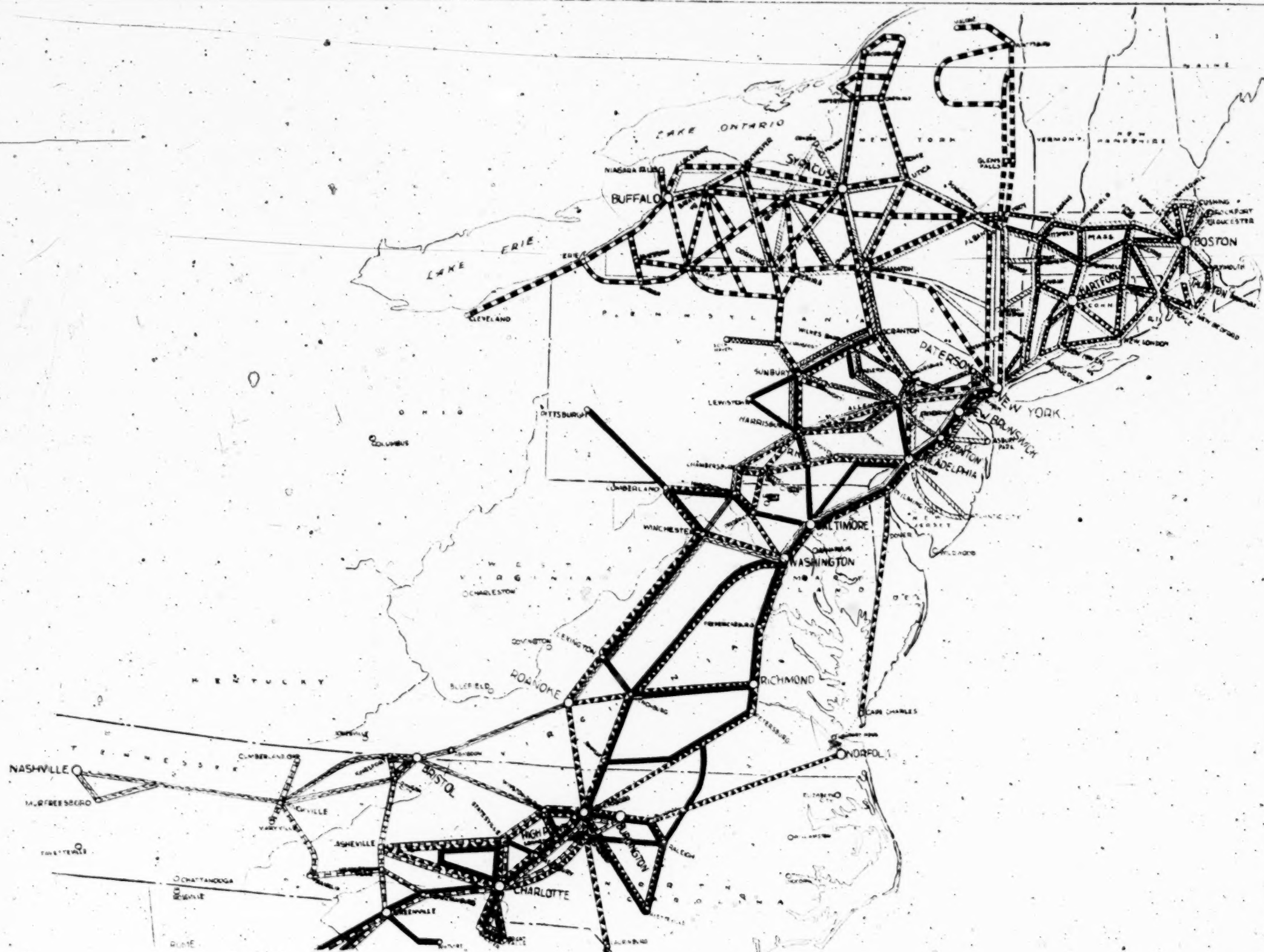
Claude A. Cochran.

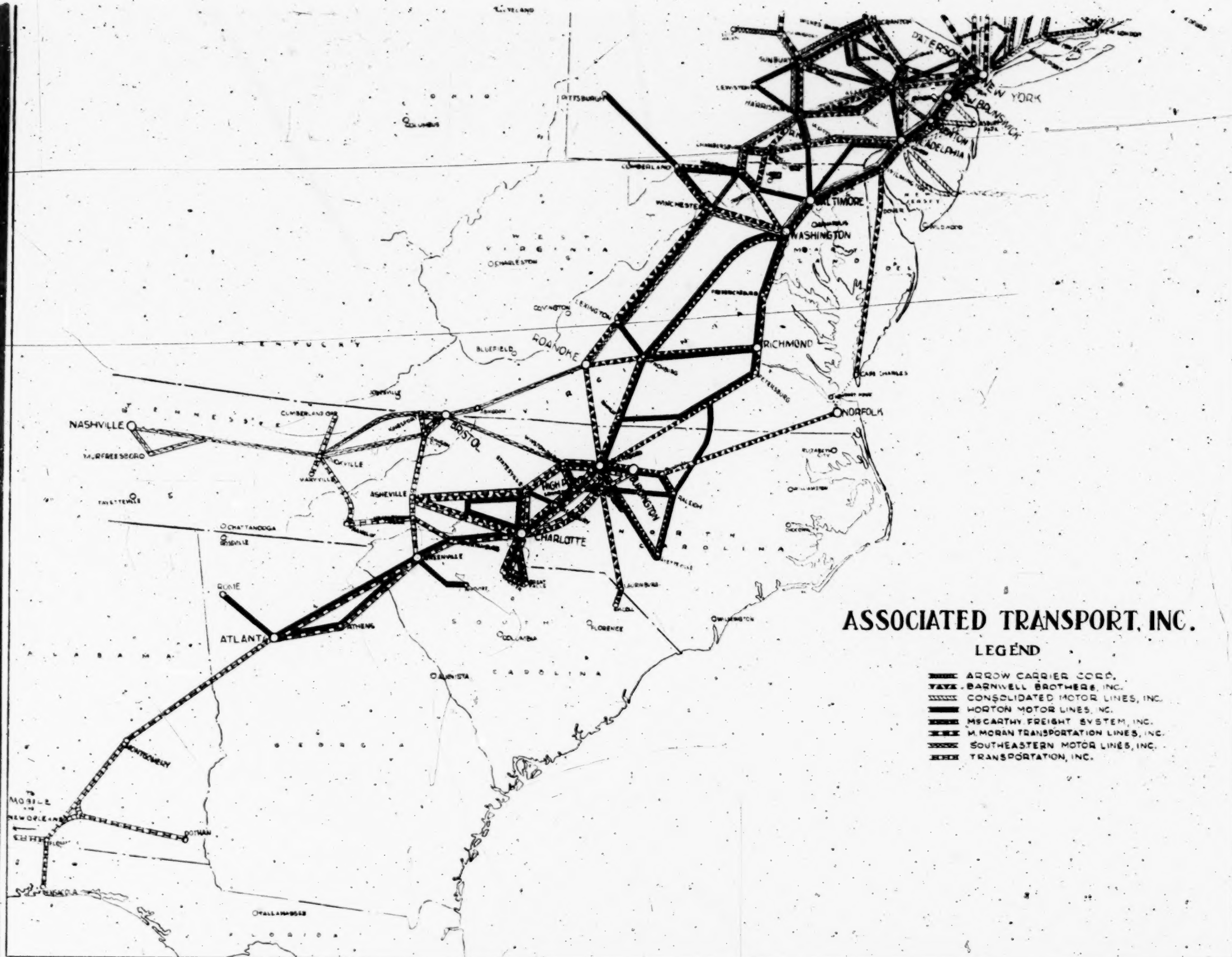
HUGH M. JOSELOFF.

Hugh M. Joseloff.

MORTIMER ALLEN SULLIVAN.

Mortimer Allen Sullivan.





## ASSOCIATED TRANSPORT, INC.

### LEGEND

- ARROW CARRIER CORP.
- x-x- BARNWELL BROTHERS, INC.
- ..... CONSOLIDATED MOTOR LINES, INC.
- HORTON MOTOR LINES, INC.
- M. M. MORAN TRANSPORTATION LINES, INC.
- M. M. MORAN TRANSPORTATION LINES, INC.
- SOUTHEASTERN MOTOR LINES, INC.
- ~~~~~ TRANSPORTATION, INC.

## EXHIBIT C-6

## ASSOCIATED TRANSPORT, INC.

## Schedule of Real Property To Be Acquired From the Companies Included in I. C. C. Application and Encumbrances Thereon as of April 30, 1941

Company	Description of property	Location of property	Use: T—Terminal, S—Shop, O—Office, N—Non-operating	Date acquired	Total cost	Mortgage payable				
						Original amount 4/30/41	Amount owing 4/30/41	Interest rate	Maturity date	Amortization of mortgages
Consolidated Motor Lines, Inc. (Conn.)	None									
Consolidated Motor Lines, Inc. (Mass.)	None									
United Arthur Express, Inc.	Land & Bldg Building	E. Hartford, Conn.	T	1938	\$25,786.17	\$14,000.00	\$0,300.00	6%	Demand	\$200 per month.
United Sales & Mfg. Corp.	Land & Bldg	Cambridge, Mass.	T	1938	35,272.10	19,000.00	5,400.00	6%	11/15/42	\$300 per month.
McCarthy Freight System, Inc.	Land & Bldg	Worcester, Mass.	T	1941	49,062.17	32,000.00	31,200.00	5%	Demand	\$800 quarterly.
Southern New England Terminals, Inc.	Land & Bldg	Taunton, Mass.	T	1939	32,626.68	18,000.00	18,000.00	4%	Demand	None.
Southern New England Terminals, Inc.	Land & Bldg	Pittsfield, Mass.	T	1940	55,781.35	30,000.00	27,500.00	8%	Demand	\$250 per month.
Southern New England Terminals, Inc.	Land & Bldg	Providence, R. I.	T	1939	75,055.31	50,000.00	40,333.28	5%	Demand	\$416.67 per month.
Southern New England Terminals, Inc.	Bldg. in course of construction	Taunton, Mass.	O	1941*	5,817.67					
M. Moran Transportation Lines, Inc.	Land & Bldg	Olean, N. Y.	T	1941	12,300.26					
Horton Motor Lines, Inc.	None									
Brown Equipment & Mfg. Co.	Land & Bldg	Charlotte, N. C.	T & O	1938	121,612.75					
Conger Realty Co., Inc.	Land & Bldg	Charlotte, N. C.	S	1939	35,731.25					
Conger Realty Co., Inc.	Land & Bldg	Baltimore, Md.	S	1938	78,213.99					
Conger Realty Co., Inc.	Land & Bldg	Atlanta, Ga.	T	1939	55,607.48					
Conger Realty Co., Inc.	Land & Bldg	Philadelphia, Pa.	T	1939	70,902.01					
						24,000.00	165,000.00	4%	12/1/53	\$15,000 quarterly

[illegible]

## EXHIBIT C-7

## ASSOCIATED TRANSPORT, INC.

Proforma Consolidated Balance Sheet as of April 30, 1941, Giving Effect to the Stock Sold as of July 22, 1941, and to the Consummation of the Transaction Proposed

## ASSETS

Current Assets:	
Cash	\$2,066,178.76
Working Funds	70,374.38
Special Deposits	19,472.26
Notes Receivable	53,227.33
Accounts Receivable	\$1,592,573.37
Less Reserve for Uncollectible Revenues	42,819.43
Materials and Supplies	1,549,753.94
Other Current Assets	635,978.11
Total Current Assets	31,822.80
	4,426,807.58

## Tangible Property:

Carrier Operating Property	\$9,087,598.52
Less Res. for Depreciation	3,759,314.11
Non-Carrier Operating Property	5,328,284.41
Less Res. for Depreciation	119,178.57
	16,252.97
Total Tangible Property	102,925.60
	5,431,210.01

## LIABILITIES AND CAPITAL

Current Liabilities:	
Accounts Payable	\$1,252,972.26
Notes Payable	288,160.44
Wages Payable	208,128.61
C. O. D.'s Unremitted	23,834.53
Taxes Accrued & Payable	696,446.97
Other Accrued Liabilities	142,802.77
Total Current Liabilities	2,612,345.58
Advances Payable—Associated Companies & Others	154,220.50
Equipment & Other Long Term Obligations:	
Equipment Obligations	\$1,012,479.17
Other Long Term Obligations	361,174.03
Deferred Credits	1,373,653.20
Reserves for Injuries, Loss, and Damage	47,735.27
	65,563.69
Total Liabilities & Reserves	4,253,518.64
Capital Stock:	
Preferred Stock — 55,497 shares, par value \$100 each	\$5,549,700.00
Less Treasury Stock — 1,262 shares	126,200.00
Common Stock — 715,959 shares, par value \$1.00 each	715,959.00
Less Treasury Stock — 16,296 shares	16,296.00
	5,423,500.00
	699,603.00

Intangible Property:		
Organization Expense.....	9,000.00	
Investments and Advances.....	148,140.69	
Prepayments—Other Deferred Debits.....	885,276.96	
	<hr/>	
	9,000.00	
	148,140.69	
	885,276.96	
	<hr/>	
	10,000,435.24	
Total Assets.....		
Minority Interest:		
In Arrow Carrier Corp.—260 outstanding shares of Preferred Stock, par value \$100 each.....		26,000.00
In Horton Motor Lines, Inc.—Class "A" Pfd. stock, par value \$20 each:		
2,666 shares Out-		
standing.....	\$53,320.00	
276 shares subscribed	5,320.00	
	<hr/>	
	58,840.00	
Total Capital Stock.....		6,208,003.00
Unappropriated Surplus:		
Unearned Surplus arising out of consolidation.....		438,913.60
Total Liabilities and Capital.....		<hr/>
		10,900,435.24

## EXHIBIT D

Facts and circumstances which applicant relies upon to warrant approval of the proposed transaction:

The proposed transactions will result in a more economical, more efficient and speedier service to the public. More scientific and extensive maintenance will be established, thereby increasing safety of operations and reducing accident frequency, and decreasing delays from road failures of equipment.

There will also result greater flexibility in operations, particularly as concerns through movement of freight between all points served by the respective carriers and the use and concentration of equipment to meet emergency needs. Greater financial stability, increased purchasing power, and increased pay load factors will also result.

A sounder and more stable transportation system will be evolved, relations with public regulatory bodies and the shipping public will be simplified and expedited, and such transportation system will be more readily available and of greater utility to the national defense.

## EXHIBIT E

## ASSOCIATED TRANSPORT, INC.

Schedule of equipment owned and leased by the companies included in I. C. C. application as of April 30, 1941

		Motor carrier companies										Non-carrier companies				Total				Grand total all companies							
		Consolidated Motor Lines, Inc.		McCarthy Freight System, Inc.		M. Moran Transportation Lines, Inc.		Horton Motor Lines, Inc.		Barnwell Brothers, Inc.		Transportation Inc.		South-eastern Motor Lines, Inc.		Arrow Carrier Corp.		Brown Equipment & Mfg. Co., Inc.		Barnwell Warehouse & Brokerage Co.		Total		Grand total all companies			
		Owned	Leased	Owned	Leased	Owned	Leased	Owned	Leased	Owned	Leased	Owned	Leased	Owned	Leased	Owned	Leased	Owned	Leased	Owned	Leased	Owned	Leased	Owned	Leased		
Trucks	74	10																									
Trailers	264	19	104	11	214	23	293	129	1	31	8	43	8	20	85	477	54	1		8			9		466	54	
Trailers, semi	340	19	185	11	348	19	278	132	1	132	1	80	1	27	97	1,179	54			1			1		1,190	54	
Total	678	48	302	24	570	68	654	312	10	312	10	228	8	76	271	3,151	158	1		10			11		3,162	158	
NOTE: Southern New England Terminals, Inc. and Concord Brokerage Co.																											

NOTE.—Southern New England Terminals, Inc. and Conger Realty Company, Inc. do not own or lease any revenue equipment. The reserve account does not represent an actual deposit of funds.

## CERTIFICATE OF SERVICE

I, B. M. Seymour, do hereby certify that upon the 25th day of July, 1941, I served the foregoing application on the Boards, Commissions, or officials having authority to regulate the business of transportation by motor vehicle (or on the Governor where there is no Board, Commission, or official), of the States of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Ohio, Virginia, Maryland, West Virginia, Delaware, North Carolina, South Carolina, Tennessee, Alabama, Mississippi, Georgia, Florida, and Louisiana, by delivering in person (or mailing by registered mail) a true and correct copy of this application to each thereof.

ASSOCIATED TRANSPORT, INC.,

By B. M. SEYMOUR,

*President.*

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Before The Interstate Commerce Commission

APPLICATION OF ASSOCIATED TRANSPORT, INC., TO ISSUE SECURITIES.

Filed July 25, 1941

Docket No. BMC-F-1613

400 APPLICATION FOR AUTHORITY UNDER SECTION 214,  
MOTOR CARRIER ACT, 1935, TO ISSUE SECURITIES

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. BMC-F—

Application of Associated Transport, Inc., To Issue 700,000 shares of its common stock—par value \$1.00, and 60,000 shares of its preferred stock—par value \$100.00, For Purpose of (1) Acquiring the stock of various motor carriers and certain of their affiliated companies, and (2) providing working capital.

To the Interstate Commerce Commission, Washington, D. C.:

APPLICANT STATES

1. That full and correct name of applicant is Associated Transport, Inc.

Business address 1775 Broadway, New York, New York,  
(Street and number) (City) (County)

New York.

(State)

II. That applicant is a Delaware corporation doing business under the trade name or style of Associated Transport, Inc., and

that information respecting applicant is set forth in Exhibit A and supplemental exhibits, attached hereto and made a part hereof.

III. That information respecting the nature of the proposed issue of securities, for which authority is herein requested, and the terms and conditions thereof, is set forth in Exhibit B and supplemental exhibits, attached hereto and made a part hereof.

IV. That there are set forth in Exhibit C, attached hereto and made a part hereof, the facts and circumstances on which applicant relies to establish that the issuance of securities, for which authority is herein requested, is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier or of service as a contract carrier, and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose, within the meaning of Section 20 (a) (2) of the Interstate Commerce Act.

V. That if any security or securities set forth and described in this application as pledged or held unencumbered in the treasury of the applicant shall, subsequent to the filing of this application, be sold, pledged, repledged, or otherwise disposed of by the applicant, said applicant shall, within ten days after such sale, pledge, repledge, or other disposition, file with the Commission a certificate of notification to that effect, setting forth therein all such facts as may be required by the Commission.

401 VI. That, in the event of the approval of this application, applicant will subsequently submit to the Commission, in form prescribed thereby, report showing the disposition made of the securities covered by this application and the application of the proceeds thereof.

VII. That applicant will submit such additional information to support the applicant's prayer herein as the Commission may require.

Wherefore, the applicant prays: That the Interstate Commerce Commission enter an order authorizing applicant to issue the securities as described in Exhibit B and upon the terms and conditions set forth therein.

Dated this 22nd day of July 1941.

[SEAL]

ASSOCIATED TRANSPORT, INC.

By B. M. SEYMOUR,

*President.*

Post Office Address: 1775 Broadway, New York, New York.

## OATH

STATE OF NEW YORK,

*County of New York, ss:*

B. M. Seymour makes oath and says that he is the President of the Associated Transport, Inc., that he is authorized on the part of said applicant to verify and file with the Interstate Commerce Commission this application and exhibits attached hereto; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof; that he has knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

B. M. SEYMOUR.

Subscribed and sworn to before me, a Notary Public in and for the State and County above named, this 22 day of July 1941.

[SEAL]

JOSEPH C. CATANZARO,  
Notary public.

Bronx County Clerk's No. 26. Bronx County Register's No. 21C42. New York County Clerk's No. 132. New York County Register No. 2C125. Term Expires March 30, 1942.

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## EXHIBIT A

ASSOCIATED TRANSPORT, INC.

## Information Respecting Applicant

1. (a) Date and State of incorporation is as follows: Date March 5, 1941. State, Delaware.

(b) Name and business address of directors: H. D. Horton, 1001 Clarkson St., Charlotte, N. C.; B. M. Seymour, 1775 Broadway, New York, N. Y.; E. J. Arbour, 1179 Main St., Hartford, Conn.; J. J. McCarthy, Olney & Wales St., Taunton, Mass.; J. P. Altwater, 22 Roosevelt St., Buffalo, N. Y.; R. W. Barnwell, Hawking St., Burlington, N. C.; C. C. Brock, Commonwealth Ave., Bristol, Va.; W. L. Moore, 75 Ivy St. NE., Atlanta, Ga.; and J. S. Arnold, 52 William St., New York, N. Y.

(c) Name, title, and business address of officers: H. D. Horton, Chairman Board of Directors, 1001 Clarkson St., Charlotte, N. C.; B. M. Seymour, President and Treasurer, 1775 Broadway, New York, N. Y.; and B. D. Ryan, Secretary, 1775 Broadway, New York, N. Y.

(d) Name and business address of ten principal stockholders as of last record date and their respective holdings:

Name	Street address, city, and state	Extent of interest Class Shares %
------	---------------------------------	--------------------------------------

See Exhibit A-1-(d) attached hereto:

403 (e) A properly certified copy of articles of incorporation and bylaws, with all amendments, have been filed concurrently herewith in an application for authority under Section 5, Interstate Commerce Act, to acquire control of certain motor carriers through ownership of stock. See BMC-45.

2. Applicant is not a partnership.
3. Applicant is not an association or other form of organization.
4. Applicant is not a trustee, receiver, or other like representative of the real party in interest.
5. Applicant is not a party of a system or group of companies.
6. Applicant was incorporated on March 5, 1941, to become the instrument through which

- (1) unification of control, and
- (2) consolidation of certain motor carriers and certain of their affiliated noncarrier companies could be effectuated.

See application filed concurrently herewith in BMC-45.

7. No annual report to stockholders has been made since applicant has not been in existence for a year.
8. Applicant is not engaged in transportation by motor carrier in interstate or foreign commerce.
9. Attached hereto are separate statements, identified as indicated, showing the following described information:

A-9-a. Profit and Loss Statement of applicant for the current calendar year to the latest available date is furnished in BMC-45, Exhibit A-10. No Profit and Loss Statement for each of the two preceding calendar years are available since applicant was not then in business.

A-9-b. Balance Sheet Statement, in the form prescribed, as of the latest available date in the current calendar year, is furnished in BMC-45, Exhibit A-6. No Balance Sheets for the two preceding calendar years are available since applicant was not then in business.

10. The name and address of the independent certified public accountant who prepared, or under whose direction were prepared, the financial statements requested in (9) above, are as follows: Harry J. Reicher and Company, Empire State Building, New York, New York.

11. No additions to, or reductions in, the property account during the periods for which the balance sheets requested in A-9-b represent anything other than acquisitions of property, or retirements or sale of property.

12. There is no policy or practice with respect to reserves for depreciation, or similar reserves, as the applicant does not own any depreciable property at this date.

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## EXHIBIT A-1-(d)

List of stockholders of applicant as of latest record date and their respective holdings

Name	Address	Extent of interest		
		Class	Shares	%
H. D. Horton	Charlotte, N. C.	Common	10,562	14.77
Mrs. H. D. Horton	Charlotte, N. C.	Common	514	.72
Ben S. Horton	Charlotte, N. C.	Common	513	.72
Henry C. Horton	Charlotte, N. C.	Common	513	.72
Everett J. Arbour	1886 Albany Ave., W. Hartford, Conn.	Common	890	1.20
Helen Arbour	1886 Albany Ave., W. Hartford, Conn.	Common	528	.74
Everett J. Arbour, Trustee	1886 Albany Ave., W. Hartford, Conn.	Common	1,858	2.59
Elsie Cotter Ghent	114 Garfield Rd., W. Hartford, Conn.	Common	296	.41
Helen H. Joseloff	47 Cumberland Rd., W. Hartford, Conn.	Common	117	.16
Phoenix Securities Corporation	44 Wall St., New York City	Common	2,271	3.17
Earl E. Simpson	Waterloo Road, Waterloo, N. Y.	Common	236	.30
Wendell E. Simpson	64 Ridgewood Rd., W. Hartford, Conn.	Common	236	.30
Alexis P. Scott	104 Ridgewood Rd., W. Hartford, Conn.	Common	50	.07
John J. McCarthy	425 Canton Ave., Milton, Mass.	Common	983	1.37
George E. Bertucio	63 Park Edge Ave., Springfield, Mass.	Common	418	.58
Charles F. McCarthy	194 Main St., No. Easton, Mass.	Common	398	.43
Isabel J. McCarthy	425 Canton Ave., Milton, Mass.	Common	464	.49
Kathleen E. McCarthy	194 Main St., No. Easton, Mass.	Common	464	.49
Alexander W. Chisholm	16 Cape Code Lane, Milton, Mass.	Common	100	.14
Alexander W. Chisholm and Edwin F. Weber, Trustees	Corner Olney and Wales Streets, Taunton, Mass.	Common	740	1.03
Clifford C. Brock	Bristol, Va.	Common	627	.87
B. L. Huntsman	Bristol, Va.	Common	327	.45
J. T. Howard	Bristol, Va.	Common	74	.10
Vance F. Graham	Bristol, Va.	Common	26	.04
J. P. Altwater	22 Roseville St., Buffalo, N. Y.	Common	2,808	3.92

*List of stockholders of applicant as of latest record date and their respective holdings—Continued*

Name	Address	Extent of interest		
		Class	Shares	%
B. M. Seymour. <sup>1</sup>	1775 Broadway, New York, N. Y.	Common	31,240	43.7
A. S. Clay	Hurt Building, Atlanta, Ga.	Common	275	.38
405 The Transport Company <sup>2</sup>	52 William St., New York, N. Y.	Common	11,278	15.8
R. W. Barnwell	P. O. Box 341, Burlington, N. C.	Common	2,794	3.90

<sup>1</sup> B. M. Seymour, agreeable to an offer of Associated Transport, Inc., has purchased at par the above common stock out of those shares allocated to be sold to raise funds for the prosecution of the current Interstate Commerce Commission application. Said B. M. Seymour has no agreement or understanding to purchase or otherwise acquire any additional stock of Associated Transport, Inc., from any source whatsoever.

<sup>2</sup> Certain accounting material, engineering surveys, appraisals, and maps and transcript of testimony, etc., developed or acquired by The Transport Company in conjunction with an attempted merger in 1940 of a group of carrier and noncarrier companies including the companies concerned in this application, have been purchased from said corporation for 9,000 shares of the \$1 par common stock of Associated Transport, Inc.

<sup>3</sup> To be distributed to various stockholders of Barnwell Brothers, Inc., in accordance with instructions to be furnished by them.

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## EXHIBIT B

NATURE OF TRANSACTION PROPOSED AND TERMS AND CONDITIONS THEREOF

1. A detailed description of the stock proposed to be issued, is as follows:

(a) Preferred stock all of one class.

(b) Common stock all of one class.

(1) 45,000 shares of preferred stock, and 700,000 shares of common stock are proposed to be issued, in exchange for stock of certain motor carriers and certain noncarriers, as more particularly set forth in Exhibits C-1 thru C-1 a, b, c, in an application filed concurrently herewith under Section 5, Interstate Commerce Act, in Docket No. BMC-F.

(2) 15,000 shares of preferred stock are proposed to be issued, offered, and sold to the public for working capital and general corporate expenses.

(c) Preferred stock shall have a par value of \$100.00. Common stock shall have a par value of \$1.00.

2. Each issue of stock for which this application is made and each class of capital stock outstanding as of the date of this application, has the following rights, preferences, and privileges.

(a) Voting rights: The holders of the preferred and common stock have one vote for each share of stock. At the election for directors each stockholder entitled to vote shall be entitled to as many votes as shall equal the number of his voting shares of stock, multiplied by the number of directors to be elected, and he may cast all of such votes for a single director or may distribute

them among the number to be voted for, or for any two or more of them, as he may see fit.

(b) Preferences: The preferences on preferred stock relate to dividend and liquidation rights, as more particularly set forth in (d) and (f) hereto.

(c) Conversion privileges: The holders of the preferred stock shall have the right to convert said preferred stock into common stock of the corporation as follows:

Within the first three years after date of issuance at the rate of four shares of common stock for one share of preferred stock; for the next succeeding three years at the rate of three and one-third shares of common stock for one share of preferred stock, and, thereafter, at the rate of three shares of common stock for one share of preferred stock.

(d) Rights to dividends: The holders of the preferred stock shall be entitled to a cumulative preferential dividend of 6% per annum on the par value, payable annually, semiannually or quarterly, as may be determined by the board of directors. Dividends on the common stock, when and as declared by the board of directors, shall be paid provided the full dividend on the preferred stock for all past dividend periods shall have been paid.

407 (e) Retirement rights: At any time within five years from date of issuance the board of directors of the corporation may redeem the whole or any part of the outstanding preferred stock on any dividend payment date by payment of \$110.00 for each share thereof, and thereafter, by paying \$105.00 for each share thereof, together with unpaid dividends at the rate of 6% per annum on the par value thereof to date of such redemption. Thirty days prior written notice to each stockholder of such redemption is required.

(f) Liquidation rights: In the event of any liquidation, dissolution or winding up of the affairs of the corporation, the holders of the preferred stock shall be entitled, before any assets of the corporation shall be distributed among or paid over to the holders of the common stock, to be paid \$105.00 per share, together with unpaid dividends due at the rate of 6% per annum on the par value thereof.

3. This application does not cover the issuance of securities other than stock.

4. No information is given for issuance of securities other than stock since no application thereof is made herein.

5. There has been no denial by any regulatory body effecting the right to sell any securities of the applicant.

6. (a) No commitment with respect to the sale of securities of the applicant as proposed herein has been made with or received

from any underwriter or any other person, firm, corporation, or association. When as and if an application filed concurrently herewith under Section 5, Interstate Commerce Act, in Docket No. BMC-F, together with this application, be approved and authorized by the Commission it is proposed to issue and offer to the public 15,000 shares of the preferred stock at not less than the par value thereof. In such event various underwriters will be offered the opportunity to take said preferred stock and any resulting underwriting agreement will be subject to the approval of and a copy of such agreement filed with the Commission.

(b) None of the securities are covered by outstanding options.

(c) The securities which the applicant seeks authority to offer to the general public are proposed to be offered at not less than the par value thereof.

(d) No person or group of persons are to be offered the securities for a consideration varying from the price at which securities are proposed to be offered to the general public.

7. Since no commitment with respect to the sale of securities of the applicant to the general public has been made or received from anyone, it is not possible to estimate the expenses in connection with the issue. Prior to the issuance of such securities applicant will furnish to the Commission the estimated expenses in connection therewith.

8. The net proceeds of the issue of securities proposed to be sold to the general public will be used for working capital and general corporate expenses.

408 9. No securities have been sold to the public within two years preceding the filing of this application.

10. No payment has been made to any organizer, nor is any amount intended to be so paid.

11. Attached hereto are the following exhibits, identified as indicated:

B-11-a. Copies of all resolutions of directors authorizing the issuance of securities for which authority is herein requested, authenticated by a proper executive officer of the applicant; and, if the charter or bylaws require approval by the stockholders, copy of the resolution of the stockholders authorizing the issuance of such securities, and indicating the percentage of stock voting for such authorization.

B-11-b. Copies of all resolutions of stockholders or directors, or duly authorized committee thereof, authenticated by a proper executive officer of the applicant designating by name and for that purpose the executive officer by whom the application is signed and verified, and filed on behalf of the applicant.

B-11-c. Since applicant is not any organization than a corporation, no evidence is furnished showing authorization and de-

signation of the individual signing, verifying, and filing on behalf of the applicant.

B-11-d. Since applicant is not a trustee, receiver, or like representative of a real party in interest, no certified copy of the court order authorizing the contemplated action is furnished.

B-11-e. Signed opinion of counsel that the issue of securities, for which authority is herein requested, meets the requirements of law and will be legally authorized and valid if approved by the Commission.

B-11-f. Since applicant is not a motor carrier, no map indicating routes of applicant is furnished.

B-11-g. Specimens, or forms where specimens are not available, of all securities in respect of which the application is made.

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## EXHIBIT B-11-A

I, Bertha D. Ryan, secretary of Associated Transport, Inc., a corporation duly organized and existing under the laws of the State of Delaware, do hereby certify that the following is a true and correct copy of a resolution unanimously adopted at a special joint meeting of the stockholders and directors of said company duly held in the City of New York on the 11th day of June 1941:

"Resolved that after obtaining any required authority from any regulatory body (1) this corporation issue such of its preferred and common stock as shall be required by the contracts the execution of which has this day been authorized by this board, and (2) this corporation issue, offer, and sell to the public or otherwise fifteen thousand shares of its preferred stock at not less than the par value thereof for working capital and general corporate purposes, and the officers of this corporation are hereby authorized to carry this resolution into effect."

Witness my hand and the seal of the corporation this 18th day of July 1941.

[CORPORATE SEAL]

B. D. RYAN,  
Secretary.

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## EXHIBIT B-11-b

1, Bertha D. Ryan, secretary of Associated Transport, Inc., a corporation duly organized and existing under the laws of the State of Delaware, do hereby certify that the following is a true and correct copy of a resolution unanimously adopted at a special joint meeting of the stockholders and directors of said company duly held in the City of New York on the 11th day of June, 1941:

"Resolved that B. M. Seymour, president of this corporation, is hereby authorized to cause to be prepared, to sign, verify the facts

and circumstances, and cause to be filed with the Interstate Commerce Commission, such application or applications together with all appropriate exhibits, including but not limited to applications for the issue of such of its preferred and common stock as shall be required by certain contracts the execution of which has this day been authorized by this board, and the issue, offer, and sale to the public or otherwise of 15,000 shares of its preferred stock at the par value thereof for working capital and general corporate purposes."

Witness my hand and the seal of the corporation this 18th day of July 1941.

[CORPORATE SEAL]

B. D. RYAN,  
*Secretary.*

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EXHIBITS B-11-a, B-11-b.

I, J. P. Altwater, Acting Secretary of Associated Transport, Inc., a corporation duly organized and existing under the laws of the State of Delaware, do hereby certify that the following is a true and correct excerpt from the minutes of a special meeting of the directors of said company duly held in the City of New York on the 23rd day of July 1941:

"The President presented to the Board of Directors agreement for the acquisition of capital stock of Arrow Carrier Corporation.

"The President also presented to the Board of Directors executed applications of this corporation to the Interstate Commerce Commission under Forms BMC-45 and BMC-22, in which applications the aforesaid acquisition of capital stock of Arrow Carrier Corporation was included.

"Upon motion duly made and seconded, it was

"Resolved, that the said agreement for the acquisition of capital stock of Arrow Carrier Corporation is expressly approved, ratified, and confirmed.

"Further resolved, that the action of B. M. Seymour, President of this corporation, in including such company in the aforesaid application, is hereby approved, ratified and confirmed, and that the said President is hereby directed to file such applications forthwith with the Interstate Commerce Commission."

Witness my hand and the seal of the corporation, this 23rd day of July 1941.

[CORPORATE SEAL]

JOHN P. ALTWATER,  
*Acting Secretary.*

## Opinion of Counsel

It is the opinion of the undersigned counsel that the issuance of securities for which authority is herein requested, meets the requirements of law, and will be legally authorized and valid if approved by the Commission.

CLAUDE A. COCHRAN,  
Claude A. Cochran,  
HUGH M. JOSELOFF,  
Hugh M. Joseloff,  
MORTIMER ALLEN SULLIVAN.  
Mortimer Allen Sullivan.





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## EXHIBIT C

The facts and circumstances relied upon by the applicant to establish that the issuance of securities, for which authority is herein requested, is compatible with the public interest, are more particularly set forth in Exhibit D of an application made by this applicant, pursuant to Section 5, Interstate Commerce Act, and filed concurrently herewith.

Article Third of applicant's charter and the general laws of the State of Delaware, establish a lawful object within its corporate purposes for the issuance of securities, for which authority herein is requested.

The authority sought to issue 15,000 shares of preferred stock intended to be sold to the general public is for the purpose of raising working funds and for general corporate purposes. The additional capital thus provided will facilitate improvements in terminal facilities, purchases of additional equipment, and exchange of new for outmoded equipment, establishment of adequate and scientific maintenance shops, and advantageous large-scale purchases, and will establish a strong financial security for any emergency. It will decidedly aid applicant's ability to render prompt and efficient service to the public, and is reasonably necessary and appropriate for such purpose.

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[Copy]

Thurman Arnold, Assistant Attorney General.

## DEPARTMENT OF JUSTICE

WASHINGTON

AUGUST 15, 1941.

Honorable JOSEPH B. EASTMAN, *Chairman,*  
*Interstate Commerce Commission, Washington, D. C.*

MY DEAR MR. CHAIRMAN: I understand that a hearing on the application of Associated Transport, Inc., for approval of a proposed unification of numerous motor truck carriers along the Atlantic Seaboard has been set for August 18, 1941. I would like to request that representatives of the Antitrust Division be given the privilege of appearing before your Commission and presenting evidence bearing on the question of whether the proposed unification unduly restrains competition in the transportation field.

The reason for my request is that jurisdiction to determine whether unification of carriers unduly restrains competition has been given to the Interstate Commerce Commission. The Antitrust Division is the only government agency in a position to

present evidence on the monopoly question from a point of view of the public interest. Evidence presented by private parties necessarily must be colored by their own property interests in the controversy.

Therefore, we feel that it is part of our duty to complete the record before the Commission with such evidence as we have discovered in our investigations of transportation monopolies.

We respectfully request that thirty days time be given the Division in order to furnish the Commission with evidence to complete its record on the question of undue restraints of competition. We make this request because we believe that cooperation between the Antitrust Division and the Commission will most effectively carry out the will of Congress as expressed in the regulatory acts which the Commission administers and the Antitrust Act which this Division must enforce.

Sincerely,

(Sgd) THURMAN ARNOLD,  
Thurman Arnold,  
*Assistant Attorney General.*

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## ORDER

Interstate Commerce Commission

No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION ET AL.

No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

In the matter of petition for leave to intervene.

Present: Claude R. Porter, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of petition for leave to intervene in the above-numbered proceedings, filed on behalf of the Antitrust Division, Department of Justice:

It is ordered, That said petition be, and it is hereby granted, to the extent it seeks leave for said Department to be permitted to intervene and be treated as a party herein, with the right to have notice of, and to participate in, any proceedings herein, provided, however, that such permission shall not be construed as to allow said intervener to unduly broaden the issues.

And it is further ordered, That a copy of said petition and of this order be duly served on the parties to this proceeding.

Dated at Washington, D. C., this 16th day of August 1941.

By the Commission, Commissioner Porter.

[SEAL]

W. P. BARTEL,

*Secretary.*

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Before the Interstate Commerce Commission

Dockets Nos. MC-F-1612 and 1613

ASSOCIATED TRANSPORT, INC.

*Petition for leave to intervene*

Come now your petitioners, Virginia State Horticultural Society, West Virginia Horticultural Society, Berks-Lehigh Mountain Fruit Growers Association and Appalachian Apple Service, Inc., on behalf of themselves and the apple and peach growers and shippers in the States of Virginia, West Virginia, Maryland, and Pennsylvania, respectively, and represent that they have an interest in the above entitled proceedings and desire to intervene in and become parties to said proceedings, and for grounds of the proposed intervention, say:

# I

(a) That the Virginia State Horticultural Society, its principal office at Staunton, Virginia, represents a membership of approximately 1,000 apple and peach growers and shippers in Virginia.

(b) That the West Virginia Horticultural Society, its principal office at Martinsburg, West Virginia, represents approximately 337 apple and peach growers in West Virginia.

420 (c) That the Berks-Lehigh Mountain Fruit Growers Association, its office at Boyertown, Pennsylvania, represents approximately 55 fruit growers of said counties.

(d) That Appalachian Apple Service, Inc., its principal office at Martinsburg, West Virginia, represents approximately 501 apple and peach growers of Virginia, West Virginia, Maryland, and Pennsylvania.

That each of said above organizations was created and is maintained to promote and protect the horticultural interests of their respective states and, among other things to expand the distribution of the fruit of their members and encourage the maintenance of just, reasonable, and nondiscriminatory freight rates and adequate transportation service by railroad as well as by highway.

## II.

That the shipping and receiving points of members of your petitioners are located within what is known as the Appalachian Fruit Belt or the Cumberland-Shenandoah-Potomac district in Official Classification territory served by the motor truck lines proposed to be merged by the applicant herein and any disturbance in the rates, rules, regulations, charges, or transportation service in this territory is of vital concern to your petitioners and their members.

## III

That Associated Transport, Inc., has filed an application herein asking the Commission for authority to acquire stock control of eight eastern and southern motor carriers and issue stock of a par value of some \$6,700,000.

The new combine contemplates operations through nineteen eastern and southern states from New England to Louisiana, including the States of Virginia, West Virginia, Maryland, 421 and Pennsylvania; involving more than 3,000 pieces of equipment, and assets totaling more than \$9,750,000. The eight operating companies involved are: Arrow Carrier Corporation, Horton Motor Lines, Inc., Barnwell Bros., Inc., Southeastern Motor Lines, Inc., Transportation, Inc., McCarthy Freight System, Inc., Consolidated Motor Lines, Inc., and M. Moran Transportation Lines, Inc.

That it is the belief of your petitioners that the proposed merger of these important motor truck lines, some of which are in keen competition with each other, and the issuance of securities as proposed, affect directly and/or indirectly the interest of your petitioners and their members.

Wherefore, said petitioners pray leave to intervene in and become parties hereto with the right to have notice of and be heard in person or by counsel, or other authorized representative, upon brief and at the oral argument if the latter is granted.

VIRGINIA STATE HORTICULTURAL SOCIETY,

(Signed) By: W. S. CAMPFIELD, *Secty.*

WEST VIRGINIA HORTICULTURAL SOCIETY,

(Signed) By: CARROLL R. MILLER, *Secty.*

BERKS-LEHIGH MOUNTAIN FRUIT GROWERS, INC.,

(Signed) By: L. E. NEWCOMER, *Mgr.*

APPALACHIAN APPLE SERVICE, INC.,

(Signed) By: CARROLL R. MILLER, *Secty.*

Dated at STAUNTON, VIRGINIA, September 30, 1941.

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## ORDER

Interstate Commerce Commission  
No. MC-F-1612ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORP. ET AL  
No. MC-F-1613

## ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

In the matter of petition for leave to intervene.

Present: Claude R. Porter, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of the record in the above-numbered proceedings and petition for leave to intervene filed on behalf of Virginia State Horticultural Society, Staunton, Va.; West Virginia Horticultural Society, Martinsburg, W. Va.; Berks-Lehigh Mountain Fruit Growers, Inc., Boyertown, Pa.; and Appalachian Apple Service, Inc., Martinsburg, W. Va.

It is ordered, That the said companies be, and they are hereby, permitted to intervene and be treated as parties hereto, with the right to have notice of, and to participate in, any further proceedings herein, provided, however, that such permission shall not be construed as to allow interveners to unduly broaden the issues.

And it is further ordered, That a copy of said petition and of this order be duly served on the parties to these proceedings.

Dated at Washington, D. C., this 7th day of October 1941.

By the Commission, Commissioner Porter.

[SEAL]

W. P. BARTEL,  
*Secretary.*

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Before the Interstate Commerce Commission

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL

Docket MC-F-1612

## ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

Docket MC-F-1613

*Petition of intervention*

Comes now your petitioner, the Secretary of Agriculture, and respectfully represents that he has an interest in the matters in controversy in the proceeding captioned above and desires to intervene in and become a party to such proceeding, and for grounds of the proposed intervention says:

1. The cases captioned above concern a proposed merger of the principal motor carriers operating North and South along the eastern seaboard.

2. From the evidence adduced at the hearing in these cases before the Commission's examiner it appears to the Secretary of Agriculture that the consummation of the proposed merger would in substantial measure result in the elimination of motor carrier competition in the East.

554 3. From the evidence adduced at the hearing in these cases before the Commission's examiner it appears to the Secretary of Agriculture that the consummation of the proposed merger would result ultimately in the cartelization of eastern transportation.

4. The elimination of competition in eastern transportation would adversely affect the interest of the producers and consumers of agricultural commodities.

Wherefore, petitioner prays leave to intervene and to be treated as a party hereto with the right to file exception or reply, as the case may be, to the proposed report of the examiner when it is made and to be heard in person or by counsel at the oral argument, if oral argument is granted.

Respectively submitted,

By direction of the Secretary,

(SIGNED) MARTIN G. WHITE,

*Solicitor,*

*United States Department of Agriculture,  
Washington, D. C.*

HASKELL DONOHO,

*Of Counsel,*

CHAS. B. BOWLING, *Chief,*

*Transportation Division*

*Surplus Marketing Administration.*

Dated at Washington, D. C., November 17, 1941.

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Before the

Interstate Commerce Commission

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Petition for leave to intervene*

Comes now your petitioner, the National Grange, and represents that it has an interest in the above-entitled proceedings and

desires to intervene in and become a party to said proceedings, and for grounds of the proposed intervention, says:

### I

That the National Grange is a general farm organization incorporated under the laws of the State of Kentucky. Its dues-paying membership approximates 800,000 persons. This membership is formed into 8,000 local and country units in 37 States of the Union.

### II

The purpose of the National Grange are to protect and promote the welfare of agriculture and among other things, to safeguard the interests of its members in matters relating to transportation and distribution, whether such transportation relates to railways, highways, or waterways.

### III

That Associated Transport, Inc., has filed an application herein asking the Commission for authority to merge 8 eastern and southern motor carrier lines and to recapitalize such companies and sell stock to the public.

556. The concerns which it is proposed to merge would constitute a combined operation extending from the States of New York and Massachusetts southward to Louisiana. Included in the proposed merger are the following concerns:

- M. Moran Transportation Lines, Inc.
- Consolidated Motor Lines, Inc.
- McCarthy Freight System, Inc.
- Transportation, Inc.
- Southeastern Motor Lines, Inc.
- Barnwell Bros., Inc.
- Horton Motor Lines, Inc.
- Arrow Carrier Corporation.

That the proposed combination of these large motor carriers, 4 of which are in direct competition with each other, and the recapitalization and issuance of securities as proposed, directly or indirectly, affect the interest of your petitioner and its members.

### IV

That approximately 300,000 members of the National Grange reside in the territory served by the motor truck lines proposed to

be merged in these proceedings; that many of these motor truck lines presently serve numerous of the above members of your petitioner; and that any change, disturbance or increase in rates, rules, regulations, or charges for transportation service in this territory is of vital concern to your petitioner and its members.

Wherefore, said petitioner prays leave to intervene in and become a party hereto with the right to have notice of and be heard in person or by counsel, or other authorized representative, upon brief and at the oral argument if the latter is granted.

THE NATIONAL GRANGE,  
By: FRED BRECKMAN,  
Fred Brenckman,  
*Representative:*

Dated at 1343 H. St. NW., Washington, D. C., November 10, 1941.

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## ORDER

Interstate Commerce Commission

No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL.

No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

In the matter of petition for leave to intervene.

Present: Claude R. Porter, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of the record in the above-numbered proceedings and petitions for leave to intervene filed on behalf of the Secretary of Agriculture, Washington, D. C., and The National Grange, Washington, D. C.:

It is ordered, That said Secretary of Agriculture and The National Grange be, and they are hereby, permitted to intervene and be treated as parties hereto, with the right to have notice of, and to participate in, any further proceedings herein, provided, however, that such permission shall not be construed as allowing intervenors to unduly broaden the issues.

And it is further ordered, That a copy of said petitions and of this order be duly served on the parties to these proceedings.

Dated at Washington, D. C., this 25th day of November 1941.  
By the Commission, Commissioner Porter.

[SEAL]

W. P. BARTEL,  
Secretary.

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Interstate Commerce Commission

No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL.

No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Proposed report by Vernon V. Baker, Examiner, Section of  
Finance, Bureau of Motor Carriers*

Served November 28, 1941

#### NOTICE TO THE PARTIES

This is a proposed report under part I (as distinguished from a report and recommended order under part II) of the Interstate Commerce Act, and in no event will become effective by operation of law.

Any exceptions to this proposed report should be filed with the Secretary, Interstate Commerce Commission, Washington, D. C., and served in accordance with rule XIV of the Rules of Practice.

In due course final report and order of the Commission will be issued.

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Interstate Commerce Commission

No. MC-F-1612<sup>1</sup>

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL.

Submitted ----- Decided -----

1. Acquisition by Associated Transport, Inc., of control of Arrow Carrier Corporation, Barnwell Brothers, Incorporated, Consolidated Motor Lines Incorporated, Horton Motor Lines, Incorporated, McCarthy Freight System, Inc., M. Moran Transportation Lines, Inc., Southeastern Motor Lines, Incorporated, and Transportation, Incorporated, through purchase of capital stock, and subsequent consolidation into Associated Transport, Inc., of the operating rights and properties of such carriers, for owner-

<sup>1</sup>This report also embraces No. MC-F-1613, Associated Transport, Inc.—Issuance of Securities.

ship, management, and operation, approved and authorized, subject to conditions.

2. Issuance by Associated Transport, Inc., of not exceeding 54,049 shares of preferred stock and 860,411 shares of common stock, having par value of \$100 and \$1 per share, respectively, for consummating the acquisitions herein authorized and for other corporate purposes, approved and authorized, subject to conditions.

Claude A. Cochran, Hugh M. Joseloff, and Mortimer A. Sullivan for applicant.

Thurman Arnold, Charles B. Bowling, Fred Brenckman, Smith R. Brittingham, Jr., John S. Burchmore, W. G. Burnette, W. S. Campfield, Frank Coleman, Joseph W. Connolly, John B. Dempsey, Haskell Donoho, Charles J. Fagg, James A. Glenn, Edward F. Lacey, J. D. Lawson, James D. Mann, David G. Macdonald, Carroll W. Miller, John M. Miller, L. E. Newcomer, Thomas P. O'Brien, L. F. Orr, W. H. Ott, Jr., Joseph A. Padway, Floyd F. Shields, Fred A. Tobin, Mastin G. White, Arne C. Wiprud, and Warren Woods for interveners.

**PROPOSED REPORT BY VERNON V. BAKER, EXAMINER, SECTION OF FINANCE,  
BUREAU OF MOTOR CARRIERS**

By application filed July 25, 1941, Associated Transport, Inc., New York, N. Y., seeks authority under section 5, Interstate Commerce Act, (1) to acquire control, through purchase of capital stock, of eight corporations, viz:

560 Arrow Carrier Corporation, Paterson, N. J.; Barnwell Brothers, Incorporated, Burlington, N. C.; Consolidated Motor Lines Incorporated, Hartford, Conn.; Horton Motor Lines, Incorporated, Charlotte, N. C.; McCarthy Freight System, Inc., Taunton, Mass.; M. Moran Transportation Lines, Inc., Buffalo, N. Y.; Southeastern Motor Lines, Incorporated, Bristol, Va.; Transportation, Incorporated, Atlanta, Ga.; and (2) to consolidate into itself the operating rights and properties of these corporations<sup>2</sup> within one year from date of acquisition of control. By separate application concurrently filed, as amended, Associated Transport, Inc., seeks authority under section 214 of the act to issue 54,049 shares of preferred and 880,311 shares of common stock, having par value of \$100 and \$1 per share, respectively, to enable it to acquire control of the above-mentioned companies and four affiliated noncarrier companies,<sup>3</sup> to provide funds for working

<sup>2</sup> These corporations will hereinafter be referred to as Arrow, Barnwell, Consolidated, Horton, McCarthy, Moran, Southeastern, and Transportation, respectively, and collectively as the carriers involved.

<sup>3</sup> The affiliated companies involved are Barnwell Warehouse & Brokerage Company, Brown Equipment & Manufacturing Company, Conger Realty Company, and Southern New England Terminals, Inc., herein called Barnwell Warehouse, Brown, Conger, and Southern Terminals, respectively. Barnwell Warehouse is an associated company of Barnwell, Brown and Conger of Horton, and Southern Terminals of McCarthy.

capital and other corporate purposes; and for conversion from time to time of the preferred stock issued.

The applications were heard on a consolidated record, and briefs have been filed. A motor carrier, The International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, The National Industrial Traffic League, and the Antitrust Division, Department of Justice, oppose the applications. A number of other motor carriers, shippers, shipper organizations and the Lynchburg, Va., Chamber of Commerce also intervened but did not oppose the application. Evidence was introduced by the Antitrust Division. The Secretary of Agriculture and several agricultural associations intervened subsequent to the hearing.

561 Applicant was organized March 5, 1941, under the laws of Delaware, primarily for the purpose of effectuating the transactions proposed, and is not presently engaged in any business. It is authorized to issue 100,000 shares of \$100-par-value preferred stock, and 1,000,000 shares of \$1-par-value common stock. It has issued, and there are presently outstanding, 71,480 shares of common stock, the largest single stockholder being B. M. Seymour, its president, who owns 31,420 shares. The remainder of the outstanding stock is held by stockholders of the corporations of which applicant is proposing to acquire control. With the exception hereinafter mentioned, all of the outstanding stock was subscribed and paid for at par to provide funds for organization expenses and for prosecution of the instant applications. The subscribers have agreed that they will not sell or otherwise dispose of such stock for a period of 30 months from June 11, 1941, subject to certain exceptions in the case of all subscribers except Seymour. Applicant delivered 9,000 shares of its common stock to The Transport Company, of New York City, for engineering and accounting data with respect to the companies involved, which data were developed by The Transport Company in connection with proceedings described in Transport Co.—Control—Arrow Carrier Corp., 36 M. C. C. 61, herein called the Transport Co. case. The Transport Company is controlled, through ownership of all its outstanding stock, by Kulin, Loeb & Company, investment bankers of New York City.

Applicant's board of directors consists of nine persons, seven of whom are officers of the respective carriers of which control would be acquired. One member represents The Transport Company, which has contracted to sell Arrow's stock, and the ninth

\*A subscriber other than Seymour may transfer all or part of his stock to one or more officers or employees of the company herein involved, excluding applicant, of which he is presently a stockholder, provided that only one transfer of each share of stock may be made, and no transfer may be made for any consideration greater than \$1 per share.

member is Seymour. H. D. Horton, who owns all outstanding stock of Horton, is chairman of the board.

Applicant's balance sheet as of June 30, 1941, shows assets aggregating \$60,202, consisting of: Cash \$36,446, notes receivable 562 \$15,620, and organization expenses \$8,136. Liabilities were: Capital stock \$60,202. Since the date of that balance sheet, applicant has issued 11,278 shares of common stock.

A general description of the organization and operations of each of the carrier and noncarrier companies involved in these applications, except applicant, is contained in Appendix A of the Transport Co. case. The carriers operate principally as motor-vehicle common carriers of general commodities, over a network of regular routes, and together serve the principal points in Massachusetts, Rhode Island, Connecticut, New York, Eastern Pennsylvania, New Jersey, Delaware, Maryland, the District of Columbia, Virginia, and North Carolina. Their routes also extend from points in such area to Cleveland, Ohio, Pittsburgh, Pa., Nashville and Chattanooga, Tenn., Great Falls and McColl, S. C., and to New Orleans, La., and Pensacola, Fla., via Atlanta, Ga., and Montgomery, Ala., and pass through northeastern West Virginia. They operate approximately 3,300 units of revenue equipment, and the total highway miles covered by the regular routes of the respective carriers is 37,884. Certain of such carriers also operate over irregular routes in the same general territory covered by their regular-route operations, and McCarthy conducts certain contract-carrier operations which will be hereinafter more particularly described. Since October 11, 1940, Arrow's operations have been conducted by The Transport Company under a lease of the former's operating rights and properties. As amended, such lease expires December 31, 1941, and provides for a rental equal to the net earnings derived from the operations, provided that if such rental exceeds 15 percent of the net worth of Arrow as of March 31, 1941, the excess shall be divided equally between lessor and lessee.

Balance-sheet statements of the companies involved, as of April 30, 1941, are shown in Appendix A of this report. A statement showing, to the extent available, their revenues and net income, before and after income taxes, for the years 1932 to 1940, inclusive, and the four-month periods ended April 30, 1940 and 1941, 563 respectively, appears in Appendix B. In order that the result of operations by Arrow and its lessee may be more clearly presented, on a basis comparable to that of the other carriers, financial data herein contained respecting Arrow disregards the existence of the lease and treats the revenues and ex-

penses of lessee, accruing during the period of the lease, as revenues and expenses of Arrow, whereas, technically, only the net income would be reflected on the latter's books.

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## TERMS OF PROPOSED TRANSACTIONS

Under separate agreements entered into between it and the stockholders<sup>3</sup> of the carrier and non-carrier companies involved, applicant would acquire all outstanding stock of each of those companies with the exception of Arrow and Horton. With respect to Arrow, applicant would acquire all of its common and 1,120, of 1,380 shares outstanding, of its preferred stock. Such preferred stock, having a par value of \$100 per share, is redeemable at \$105 per share plus accrued dividends, and that portion not purchased by applicant would be called for redemption either prior to or shortly after completion of the purchase. In addition to the common stock outstanding, all of which would be acquired by applicant, Horton has issued 2,666 shares of \$20-par-value employees preferred stock and has received subscriptions for 276 additional shares of such stock. The employees preferred stock, which is redeemable at par plus accrued dividends, would be called for redemption prior to consummation of the proposed transaction.

Contracts respecting acquisition of the stocks of the respective companies are substantially uniform. Their most important features are described below.

The contracting stockholders of each of the companies of which control would be acquired would exchange their stock in such company for capital stock of applicant in an amount determined as follows: Preferred stock having a par value equal to 80 percent of the net worth, as of April 30, 1941, of the particular company involved, exclusive of any increase therein resulting from application of lower depreciation rates, as hereinafter mentioned; and common stock of a par value equal to an amount obtained by deducting from the company's net profit for the year ended April 30, 1941, a sum equal to 6 percent of the par value of the preferred stock received, and dividing the remainder by two.

565 Fractional shares of one-half or more would entitle the parties to a full share, and a fractional share of less than one-half would be disregarded.

Net worth and net profit of a company for the purposes of the agreement was determined in accordance with formulae prescribed

<sup>3</sup> The agreement respecting Arrow's stock was entered into with The Transport Company. The latter does not presently own the common stock which it agreed to sell to applicant but is under obligation to purchase such stock on or before December 18, 1941, pursuant to agreement described in the *Transport Co.* case, which has been subsequently amended in certain respects not here important.

therein. Balance-sheet and income statements of the companies for the date and period indicated, prepared in accordance with regulations of this Commission, were audited and adjusted pursuant to such formulae by a public accounting firm. The principal adjustments made were as follows: Intangible items were eliminated; provision for income taxes was made on the basis of 1940 rates; tires on equipment at the beginning and ending of the stated period were computed at 50 percent of cost; in computing net worth and net profit, prescribed rates of depreciation were applied;<sup>5</sup> reserves for uncollectible freight accounts receivable were established on a uniform basis; and the amount of certain expenditures, specifically set forth in the respective contracts, made during the applicable period, represented as being of a non-recurring nature, less provision for income taxes, were added to the adjusted net profit of the respective companies. The total of such expenditures, after deduction for taxes, applicable to each of the companies is set forth in the margin. Deductions were also made from the net worth of Arrow and Horton in amounts equal to the call price, excluding accrued dividends, of the preferred stock of those companies which would not be acquired by applicant. A further reduction of \$12,000 was made in Arrow's net worth by reason of a payment to be made by it in that amount for cancellation of the liability of Arrow under an employment agreement with one of its officers. Consolidated's net worth was 566 reduced by \$36,000 representing an expenditure made by it subsequent to April 30, 1941, for acquisition of 90 shares of its outstanding capital stock. Schedules showing the nature of all adjustments made are contained in the record. The net worth and net income of each of the companies involved for the date and period applicable, as reflected in their accounts and as adjusted for the purposes of determining the consideration, are shown in Appendix C of this report. That appendix also shows the amount of preferred and common stock which applicant would be obligated to issue in order to consummate the transactions.

In determining the considerations, exceptions were made in the following instances: (1) in the case of Barnwell Warehouse, a departure from the general provisions was made necessary because Barnwell Warehouse, in addition to other assets, owns a substantial portion of Barnwell's stock and would receive therefor 1,107 shares of applicant's preferred and 15,472 shares of its common stock. The consideration for the stock of Barnwell

<sup>5</sup> If application of such depreciation rates resulted in increasing the value of a company's tangible property, such increase would not entitle the vendor stockholders to additional preferred stock of applicant, but in lieu thereof they would receive common stock having a par value equal to 4 percent of the amount of increase.

<sup>6</sup> Arrow, \$30,556; Barnwell, \$6,073; Barnwell Warehouse, none; Brown, \$1,072; Conger, none; Consolidated, \$25,003; Horton, \$35,925; McCarthy, \$7,974; Moran, none; Southeastern, \$8,643; Southern Terminals, \$2,565; Transportation, none; total, \$117,753.

Warehouse was fixed at 1,222 shares of preferred and 16,876 shares of common stock. As applicant, in acquiring control of Barnwell Warehouse, would, in effect, reacquire the stock received by that corporation, the net consideration for other assets of that company would be 115 shares of applicant's preferred and 1,404 shares of its common stock. (2) The stockholders of Moran would be entitled to 29,000 shares of applicant's common stock in addition to that deliverable under the general provisions of the contract. (3) No adjustments were made with respect to depreciation on Southeastern's revenue equipment, and, in lieu thereof, the contract provides for delivery to its stockholders of 2,000 additional shares of applicant's common stock. (4) The consideration for the stock of Transportation, which company's financial statements show deficits in net worth and income, was fixed at 5,335 shares of applicant's common stock.

The selling stockholders in each instance agreed to purchase at par a prescribed number of shares of applicant's common stock for the purpose of paying expenses in connection with the proposed transactions. This provision of the agreements has been executed.

567 A number of restrictions are imposed calculated to preserve the assets of the respective companies of which control would be acquired, such as limitations on salaries and allowances, expenditures out of the ordinary course of business, declaration of dividends, and disposition of assets. Amendments to the original agreements provide that the respective companies may distribute by dividends, compensation, expense or otherwise, up to 20 percent of their net earnings for the year ended December 31, 1941, before provision for income taxes.

Upon closing of the transactions, applicant may withhold 15 percent of each class of its stock deliverable to the selling stockholders, to secure it against losses from undisclosed and contingent liabilities and other specified causes. Such stock may be withheld for three years but may be released sooner upon vote of two-thirds of applicant's board of directors.

The contracts contemplate closing of the transactions within 10 days after approval by this Commission, but such time may be extended by agreement between applicant and a majority of the persons named as designees of the stockholders in the respective contracts.

Consummation of each contract is conditioned upon approval by this Commission of the particular acquisition involved and approval of acquisition of the stocks of Barnwell, Consolidated, Horton, McCarthy, and Moran, and is further conditioned upon the Commissioner of Internal Revenue entering into a closing agreement, approved by the Secretary, Undersecretary, or an

Assistant Secretary, of the Treasury declaring that the contemplated transactions constitute a tax-free reorganization.

Consolidation: As indicated, authority is sought to consolidate into applicant the operating rights and properties of the carriers involved within one year from the date of acquisition of stock control. It is proposed that applicant shall take over all of the assets and assume all of the liabilities of the carriers, and shall become the sole operating company. Decision has not been reached as to whether the separate identities of the non-carrier companies would be maintained. With respect to Brown, tentative conversations have been had with other interests looking toward ultimate disposal of that company's stock.

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## BENEFITS OF PROPOSED UNIFICATION

The evidence is convincing that unification of these carriers under common control, and consolidation of their operations into one unit, would present many opportunities for greater economy and efficiency of operation.

The unification would permit of more efficient and greater utilization of equipment, and corresponding reduction in consumption of motor fuel. Many carriers are now finding it difficult to provide adequate equipment to meet the needs of the shipping public. Consolidation of the tonnage of the carriers would doubtless result in a higher load factor on vehicles used in over-the-road service, and there would be a large reduction in the number of trucks required for peddler runs and pick-up and delivery service at terminal points. Extension throughout the proposed system, as planned, of scientific maintenance and safety programs, which, because of their size most of the carriers involved are unable to undertake to the extent possible to applicant with the combined facilities and resources of all the carriers involved, would add to the average life of equipment and result in more economical and safe operation and fewer road failures. The experience, and the garage and testing facilities of Consolidated and Horton, would be of material assistance in carrying out such a program. Vehicles could be readily shifted from one part of the system to another to meet peak demands and extraordinary needs, and by reason of that fact less reserve equipment in the aggregate would be required.

The eight carriers involved presently maintain 179 separate terminals in 129 cities and towns. In one city 6 terminals are located, in another 5; in 11 cities there are 3 each, and in 19 cities 2 each. At some points the terminals would be consolidated and at others there would be a rearrangement of use; for instance, where two terminals are presently located, one might be used as

an inbound and the other as an outbound terminal in order to reduce congestion and confusion in handling shipments. Consummation of the proposed transactions would, no doubt, result in substantial economies in terminal expense, and, through  
570 more efficient use of facilities, would reduce delay in the movement of traffic. Additional terminals would be established at some points where there is presently insufficient traffic accruing to any one of the carriers to justify its maintaining such facilities. This would be of convenience to shippers in those localities. Some of the carriers, particularly Transportation, have been using terminal facilities ill-adapted to such use because they have not had sufficient capital to undertake construction of proper terminals. This has materially increased the cost of operations. With the resources available to applicant, it would be able, to a degree at least, to remedy that situation.

Through movement of freight, without physical transfer of lading, between all points served by the respective carriers would be made possible. It is proposed to inaugurate through-trailer service between points where sufficient traffic is available to justify such service. This would reduce terminal costs, loss and damage claims; and the time in transit of freight now interchanged by from 6 to 36 hours. The carriers involved presently interchange a substantial amount of freight, between themselves and with other carriers. During the calendar year 1940 at New York City their interchange business amounted to \$997,000.

The Antitrust Division contends that unification of control, or consolidation, of these carriers is not necessary in order to obtain the benefits of through-trailer service, and that such service could be rendered by independent carriers through interchange of equipment without physical transfer of lading. While theoretically this may be true, from a practical operating standpoint there are many obstacles to effectuation of such arrangements. Carriers are generally reluctant, and many refuse, to turn over their equipment to others particularly when they need all available equipment for their own traffic. A carrier delivering equipment to another can never be sure when it will be returned. Complications are introduced because of the varying types, sizes, and unit costs  
of equipment used by the various motor carriers. In in-  
571 stances where equipment is interchanged there is a tendency on the part of operating personnel of each carrier to deliver inferior equipment to the other. Many disputes arise over questions of maintenance and damages incurred. There can be no doubt that through movements can be coordinated to better advantage and handled more expeditiously under common control, and that consummation of the instant transactions would result in

through movement of much freight which is now being interchanged. The fact that instances where independent motor carriers presently interchange equipment are relatively rare is itself evidence of the difficulties encountered in the making of satisfactory arrangements between them.

The unification would result in simplifying relations with shippers and public regulatory bodies. Tracing of shipments and settlement of claims would be facilitated. Congestion at shippers' platforms would be lessened. A reduction in the number of solicitors calling on shippers would result. Single-line service throughout the wide territory which would be covered by applicant would be advantageous to shippers served by it.

In addition to those previously referred to, economies could be effected through the greater purchasing power of applicant and its ability to obtain necessary financing at lower cost. Substantial savings could also be made in general and administrative expense, insurance expense, and communication expense. Using the expenses incurred by the respective carriers for the year ended April 30, 1941, as a basis, it was estimated that economies could be effected as result of the unification in an amount aggregating \$1,600,000 in the expense items shown below. The aggregate expenses of these companies under the same items for the period indicated is also shown.

572	Estimated savings	Expenses incurred
Insurance and safety expense.....	\$275,000	\$1,053,687
Sales, tariff, and advertising expense.....	150,000	734,893
Equipment maintenance and garage expense.....	450,000	2,273,442
Terminal expense.....	550,000	3,305,246
Administrative and general expense.....	175,000	1,844,016

<sup>1</sup> This is the amount estimated as the saving which would be accomplished during the first year of unified operation. It is expected that the saving in the second year would amount to \$700,000.

It was estimated that \$150,000 would be required for expenses of the central office, and that transportation expense would increase by \$125,000 because of increased cost of gasoline and oil. Such higher cost of gasoline and oil would, of course, be equally applicable to the carriers operated independently. The evidence with respect to the amount of economies which could be effected is largely speculative, but there can be no doubt that they would be important and substantial.

While not denying that the transactions would result in substantial economies, the Antitrust Division takes the position that,

as no immediate rate reductions are proposed,\* accomplishment of such economies would be of no benefit to the public. Such position is untenable. Reduction in the cost of transportation service has been recognized as being a matter of public interest in numerous decisions of this Commission. Among other things, the act declares it to be the national transportation policy of Congress "to promote safe, adequate, economical, and efficient service." It is to be expected that permanent reduction in the cost of transportation service will be reflected eventually either in lower rates than would otherwise be applied, or in improvements in service, either of which would be in the public interest. So far as rates are concerned, this Commission has adequate powers under the act to protect the situation.

The unification would not result in any increase in aggregate fixed charges. Such charges of this nature as are assumed by applicant upon consolidation should prove less burdensome to it with its combined resources than to the individual carriers involved.

The Commission should find:

1. That the proposed transactions would result in improved transportation service, in that through movements of freight would be simplified and expedited; terminal facilities would be improved, the handling of shipments reduced, relations with shippers and public regulatory bodies would be simplified, and safe operation promoted.

2. That such transactions would result in more efficient and greater utilization of equipment, and provide a transportation system better fitted to meet the increased demand for transportation service than the carriers involved if operated independently.

3. That such transactions would result in substantial operating economies.

4. Assumption by applicant of the fixed charges of the carriers involved would not be contrary to the public interest.

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#### EFFECT ON EMPLOYEES

The proposed transactions are opposed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. It is alleged that this organization represents approximately 600,000 employees engaged as drivers, helpers, warehousemen, platform men, etc., and that a substantial number of said employees are engaged in interstate hauling operations.

\* Among other things, applicant's brief states that the unification is designed: "To effectuate economies of operation so that present rates may be maintained, lowered or held within reasonable competitive limits in the rapidly rising market of supplies and labor."

it is argued that the hardships to employees that would attend the proposed consolidation negate any benefits which would otherwise accrue therefrom. As of April 30, 1941, the carriers involved employed a total of 5,816 persons, including officers.

No evidence was introduced in support of the Brotherhood's contention that the transactions would be injurious to such employees. Applicant's officers assert that no employees would be dismissed as a result of the unification, and the evidence shows that motor carriers are presently experiencing difficulty in obtaining sufficient skilled employees. Considering the increasing demand for transportation service and the evident shortage of experienced personnel, the examiner is of the opinion that consummation of the transactions would not result in any substantial hardship to employees of the carriers involved, through displacement or otherwise. Any minor detriment to employees would be more than offset by the advantages which indirectly would accrue to them from the lower operating costs and greater stability of applicant as compared with the respective carriers involved.

The Brotherhood does not appear to be particularly apprehensive of the direct result of the transactions on the employees of the carriers but argues that, if this unification is approved, other comparable unifications will follow, the aggregate result of which will be to reduce the number of employees in the motor carrier industry, and that "it will become increasingly difficult for the Commission to predicate its decisions upon the facts peculiar to  
575 a given application for a merger". So long as existing law remains in effect, the extent to which motor carriers of substantial size may unify their properties will be wholly within the control of this Commission. Action upon any unification proposed in the future will, of course, be governed by the particular circumstances there present and the general economic conditions then existing. Argument that approval of the instant transactions would unduly restrict the Commission's judgment in passing upon future proposals is untenable.

The Commission should find that consummation of the proposed transactions would not result in such substantial injury to the carrier employees affected as to warrant denial of the instant applications.

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## DUAL OPERATIONS

Pursuant to the provisions of section 210 of the act, the Commission consistently has held that a person, or persons under common control, should not be permitted to transport the same commodities for one shipper as a contract carrier, and for another shipper as a common carrier, from and to the same points

or in the same general territory. See the Transport Co. case, and cases therein cited.

McCarthy has applications, Nos. MC-59866 and MC-59866 (Sub No. 1), pending under the "grandfather" clause of section 209 (a) for a permit covering certain contract-carrier operations. Operations under the first application have been discontinued and its dismissal requested by McCarthy, and it will, therefore, be unnecessary to consider same further herein. Under the second application, McCarthy seeks a permit for continuance of two separate operations, viz.: (1) Transportation of telephone and electrical equipment and supplies between points in Connecticut and Tottenville, N. Y., and (2) transportation of precious metals and supplies, and equipment used in connection therewith, between specified points in Connecticut, Massachusetts, New Jersey, New York, and Rhode Island. The parties have advised of their willingness that McCarthy cease the operations described under (1), *supra*, and that its "grandfather" application be amended accordingly. The proposed findings will be appropriately conditioned. The other operation is a specialized service conducted with armored vehicles and would not be competitive with any of the common-carrier operations here involved. Continuance of such operation after consummation of the proposed transactions appears unobjectionable.

United-Arbour Express, Inc., herein called United-Arbour, a wholly owned subsidiary of Consolidated, formerly operated in interstate or foreign commerce as a motor-vehicle contract carrier, and on March 29, 1938, in No. MC-14092, issuance of a permit to it was authorized covering operations of that character in the transportation of "such merchandise as is dealt in by wholesale, retail, and chain grocery and food business houses, and in connection therewith, equipment, materials, and supplies used in the conduct of such business" between all points in an area in Connecticut bounded generally by New London, Torrington, Westport, and Long Island Sound. Consolidated and McCarthy are each authorized to transport the same commodities between many of the points served by United-Arbour. The instant application represented that such operation would be disposed of or discontinued by United-Arbour prior to consummation of the proposed transactions, and at the hearing it was shown that operations by it had actually been discontinued. However, the parties have not requested cancellation of United-Arbour's operating authority; and, in order to prevent possible creation of an objectionable dual operating situation, the proposed findings will be appropriately conditioned.

The Commission should find:

1. That the contract-carrier operation conducted by McCarthy in the transportation of telephone and electrical equipment and supplies is competitive with the common-carrier operations here involved, and the operation authorized to be conducted by United-Arbour would likewise be competitive with such common-carrier operations.

2. That unification of control in applicant of such common and contract-carrier operations would not be consistent with the public interest.

3. That any authority herein granted for acquisition of control of McCarthy should be upon condition that, prior to exercise thereof, McCarthy shall discontinue contract-carrier operations in interstate or foreign commerce in connection with the transportation of telephone and electrical equipment and supplies, and shall file an appropriate amendment to its application in No. MC-59866 (Sub No. 1) to eliminate therefrom all claim to rights to conduct such operations.

578 4. That any authority herein granted for acquisition of control of Consolidated should be upon condition that, prior to exercise thereof, United-Arbour shall file an appropriate petition with this Commission requesting cancellation of any authority it may possess to engage in operation in interstate or foreign commerce as a motor-vehicle contract carrier.

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#### CORPORATE SIMPLIFICATION

Many duplications exist in the operations of the carriers involved. Maintenance of separate corporations under common control, rendering substantially the same service, frequently has been condemned. Transport Co.—Control—Arrow Carrier Corp., supra, and cases therein cited. Apparently in recognition of the foregoing, applicant proposes to consolidate the operating rights and properties of all the carriers within one year from date of acquisition of control, and requests authority to accomplish such consolidation. Applicant's officers and directors are of the opinion that such a period of time would be required in order to establish complete consolidation on a sound basis without undue waste of assets and undue expense. Immediate consolidation of all the companies would result in substantial losses through expenses incurred for insurance and licensing, and it is planned to consolidate the properties with due regard to expiration dates of licenses and insurance in force. In order to license equipment most advantageously, some study of the placement of equipment throughout the system will be required. It is also pointed out

that some of the carriers involved possess certain rights to operate in intrastate commerce and that, in order to comply with State requirements, applicant will be required, prior to consolidation, to secure authority for transfer to it of such intrastate operating rights.

Considering the foregoing, it appears that, if a unification of these carriers is to be permitted, the best interests of the parties involved would be served by authorizing applicant to acquire control prior to consolidation, and that such action would not be inconsistent with the public interest, provided an appropriate condition is imposed to insure consolidation within a reasonable time. In the Transport Co. case the Commission expressed doubt as to its power to impose a condition which would require subsequent merger or consolidation of corporations of which applicant therein sought to acquire control. However, the  
580 subject was not fully explored and no finding was made with respect thereto, same not being necessary to disposition of the applications involved. Therefore, such statement should not be considered as necessarily controlling in the instant proceeding.

There can be no doubt that such a condition would be germane to the transactions involved because its purpose would be to prevent maintenance of a situation such as the Commission has found to be objectionable, and which otherwise might be sufficient reason for withholding favorable action on the application. The doubt with respect to the matter apparently arises from the fact that the condition would require action subsequent, rather than precedent, to exercise of authority granted. An examination of previous cases under section 5 discloses numerous instances in which the Commission has authorized transactions upon condition that the parties perform or omit certain acts in the future. Conditions have been imposed to require preservation of the separate corporate identity of an acquired line,<sup>9</sup> that a representative of such line be maintained at a certain locality,<sup>10</sup> that applicants keep open all routes and channels of trade via existing gateways,<sup>11</sup> that employees dismissed as a result of a lease be accorded compensation,<sup>12</sup> and, of particular interest here, that applicant agree and undertake to abide by such findings as the Commission might make in the future with respect to acquisition by applicant of the properties of other carriers.<sup>13</sup> The power of the Commission to impose conditions of such character has been sustained by the courts. *Atlantic Coast Line R. Co. v. U. S.*, 284 U. S. 288; *N. Y. Central*

<sup>9</sup> *Port, Worth Belt Ry. Co. Control*, 187 I. C. C. 88.

<sup>10</sup> *Alton R. Co. Acquisition and Stock Issue*, 175 I. C. C. 301.

<sup>11</sup> *Chicago R. I. & G. Ry. Co. Trustees' Lease*, 230 I. C. C. 181, 233 I. C. C. 21.

<sup>12</sup> *Southern Pac.* (Texas and Louisiana Lines) *Consolidation*, 499 I. C. C. 17; *New York, C. & St. L. R. Co. and Erie R. Co. Control*, 224 I. C. C. 239.

581 Securities Co. v. U. S., 287 U. S. 12; United States v. Lowden, 308 U. S. 225. The Commission's authority to impose such conditions having been affirmed, it can hardly be questioned that it has power to enforce them. From the foregoing, it would appear that the Commission has ample power, if it should grant authority for acquisition of control, to impose, and if such authority were exercised to enforce, a condition requiring subsequent consolidation of the carriers involved.

The situation existing here is somewhat different from that which gave rise to the previously mentioned statement appearing in the Transport Co. case. There, applicant's plans concerning subsequent unification of the operating rights and properties of the carriers involved were too vague to permit of immediate authorization of some, and additional proceedings would have been required on that phase of the matter. However, in this proceeding authority is sought to effect a consolidation upon specific terms and conditions set forth in the application, and there is nothing to prevent consideration and disposition on the merits of the entire matter at this time.

The Commission should find:

1. That there are substantial duplications in the operations of the carriers involved and, under such circumstances, continuance of separate operations by them under common control would be uneconomical and inconsistent with the public interest.

2. That consolidation of such carriers into applicant can best be accomplished if applicant is permitted first to acquire control of them through stock ownership.

3. That any authority herein granted for applicant to acquire control of such carriers should be conditioned upon applicant's filing with the Commission, prior to the exercise of such authority, a written acceptance of the following condition, viz: Applicant shall consolidate, or cause to be consolidated, pursuant to the authority herein granted, all the operating rights and properties of the carriers, involved into itself for ownership, management, and operation, within one year from the date that applicant acquires control of any of such carriers.

The Antitrust Division contends that the transactions would unduly restrain competition in the motor-carrier industry. As noted, the sum of the highway miles covered by the regular routes of the respective carriers involved is 37,884. If the proposed

consolidation were effected, applicant would operate over 24,338 miles of regular routes, indicating a duplication between the carriers of 13,546 miles. As will hereinafter appear, the actual competition existing between the carriers involved is somewhat less than might be indicated by the duplicate highway mileage, by reason of restrictions in the service they are authorized to render and differences in the nature of the traffic handled.

Undoubtedly, substantial competition exists between certain of the carriers involved, and consummation of the instant transactions would eliminate such competition. However, such fact alone is not controlling. Section 5 was designed to permit unifications which might result in restraining competition within the meaning of the antitrust laws, where the disadvantages of such restraint were offset or overcome by other advantages to the public, such as direct betterment in the public service of the carriers or indirect betterment through stabilization of the industry. Thus, determination of the larger question as to whether the proposed unification would be consistent with the public interest involves consideration not only of the competition that would be eliminated, but also of the competition that would remain, and advantages which would otherwise result from the unification. The advantages which might reasonably be expected to result are discussed elsewhere in this report. This chapter will be confined to a discussion of the extent of competition existing between the carriers involved, and competition afforded by other carriers which would not be affected by the unification. Although there is some territorial overlapping, such discussion, for convenience, will be divided into three parts, dealing respectively with the competitive situation in those portions of the territory here  
583 involved embraced within New England, the Middle Atlantic region (composed of New York, Pennsylvania, New Jersey, Delaware, Maryland, West Virginia, and the District of Columbia), and the South. Where reference is made herein to carriers, unless otherwise indicated, it means motor-vehicle common carriers of property operating in interstate or foreign commerce.

New England Region: Consolidated and McCarthy are competitive substantially throughout Connecticut, Massachusetts, and Rhode Island. In the southeastern section of Massachusetts, McCarthy is relatively strong and Consolidated relatively weak, while a reverse situation exists in southern Connecticut. Consolidated is the only one of the carriers involved operating between New York City and New England points.

Lists of carriers not involved in the proposed unification which operate <sup>14</sup> in the considered territory show 359 carriers, of which 103 are Class I carriers. A few of the principal competitors are:

Adey Express Company, Inc., New Haven, Conn.	14	\$1, 750, 000
Seaboard Freight Lines, Inc., New York, N. Y.		\$1, 725, 000
New England Transportation Company, Boston, Mass.	15	\$1, 575, 000
M & M Transportation Company, Somerville, Mass.		\$1, 460, 000
Stone's Express, Inc., Lynn, Mass.		\$1, 068, 000

Adey Express Company, Inc., is authorized to operate as a common carrier of general commodities over a network of regular routes blanketing the States of Connecticut, Massachusetts, and Rhode Island and extending therefrom to Albany and New York, N. Y., and Philadelphia, Pa. It can serve every point in the New England territory served by Consolidated and McCarthy.

New England Transportation Company, which is controlled 584 by the New York, New Haven, and Hartford Railroad Company (Howard S. Palmer, James L. Loomis, and Henry B. Sawyer, trustees), has almost equal coverage in such territory, its routes extending therefrom to New York City and Poughkeepsie, N. Y. The latter's operations as a common carrier of general commodities are described in detail in New England Transp. Co., Common Carrier Application, 12 M. C. C. 461. Seaboard Freight Lines, Inc., a subsidiary of Keeshin Freight Lines, Inc., conducts operations of the same character over a network of regular routes extending to Syracuse, N. Y., on the west, Fitchburg and Boston, Mass., on the north and east, and Washington, D. C., on the south, with service to intermediate and numerous off-route points, including most of the principal points in the region under consideration. The operations of M & M Transportation Company and Stone's Express, Inc., are not so extensive as those just mentioned, but each of these carriers furnishes substantial competition in the considered territory. The former operates as a common carrier of general commodities between Boston, on the one hand, and Philadelphia, Pa., and Hudson, N. Y., on the other, serving, among other points, New York City, Springfield, Mass., Hartford, New Haven, and Bridgeport, Conn., points within 20 miles of Worcester, Mass., those within 30 miles of Provi-

<sup>14</sup> While the evidence clearly shows that many of the carriers included in the lists are actually operating at the present time, applicant's witnesses could not testify from personal knowledge that each and every one of them was so operating. However, as reflected by the records of this Commission, all carriers included are authorized to operate in the territory and between the points hereinafter indicated. With respect to Class I carriers, each of them filed an annual report with this Commission disclosing operations during the year 1940, and it may be assumed that operations are still being conducted by them. The lists do not purport to show all of the carriers authorized to operate in the territory.

<sup>15</sup> The amounts shown represent, in round figures, total operating revenues of the respective carriers during the year 1940. Information is not available to show the portion of the operating revenues of any carrier derived from operations in a particular area or between certain points.

<sup>16</sup> This figure represents revenues from freight operations; in addition, such carrier derived \$1,170,000 from passenger operations.

dence, R. I., and those within 35 miles of Boston. It possesses additional authority to transport certain special commodities, including packing-house products from Boston to Baltimore, Md. Stone's Express, Inc., operates as a carrier of general commodities over regular routes between Boston and New York and between certain Massachusetts points, and over irregular routes between points in eastern Massachusetts.

One of the exhibits introduced in evidence analyzes the competition afforded by 294 carriers not involved in the proposed transactions, including 84 Class I carriers, over direct routes between numerous points in the territory in which Consolidated and McCarthy operate, 269 combinations of points being considered.

Such exhibit excluded from consideration services rendered 585 over irregular routes, or in the transportation of special commodities only, or general-commodity service through a combination of two or more carriers. The 25 combinations of points shown below have been selected as representative of the 269 treated in the exhibit. Opposite each combination is shown the number of Class I carriers, of the 84 treated, which afford competitive service<sup>13</sup> between the points indicated.

Between	Class I Carriers
Albany, N. Y., and—	
Boston, Mass.	6
New Bedford, Mass.	2
New Haven, Conn.	3
New London, Conn.	3
Providence, R. I.	3
Springfield, Mass.	6
Boston, Mass., and—	
Amesbury, Mass.	8
Bridgeport, Conn.	22
Hartford, Conn.	25
New Haven, Conn.	25
New London, Conn.	13
North Adams, Mass.	7
Providence, R. I.	32
Springfield, Mass.	32
Torrington, Conn.	6
New Haven, Conn., and—	
Fitchburg, Mass.	8
North Adams, Mass.	5
Providence, R. I.	18
New London, Conn., and—	
Fitchburg, Mass.	4
Greenfield, Mass.	3
Springfield, Mass.	4
Providence, R. I., and—	
Danbury, Conn.	5
North Adams, Mass.	3
Springfield, Mass., and—	
Bridgeport, Conn.	21
Brockton, Mass.	10

Another exhibit analyzes the competition afforded by 76 general-commodity carriers, including 39 Class I carriers, between various

<sup>13</sup> See footnote 13.

points in the considered New England territory, on the one hand, and New York City, Jersey City, and Newark, N. J., and Philadelphia, Pa., on the other. Among other combinations treated, it is shown that of the 39 Class I carriers considered, 22 operate between Boston and New York City, and 6 operate between Boston and Philadelphia.

586 The operating revenues in 1940 of 107 Class I motor carriers of property reporting to the Commission, whose principal operations are in the New England region (composed of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), totalled \$40,082,627.<sup>17</sup> The aggregate revenue in 1940 of Consolidated and McCarthy was \$6,467,173.

Middle Atlantic Region: Consolidated and Moran are competitive between the principal points in New York State. None of the other carriers involved have any operations of importance in that State outside of the metropolitan area of New York City. Moran's routes are considerably more extensive than, and entirely duplicate, Consolidated's routes in this territory, and extend therefrom to Cleveland, Ohio, and to numerous points in northern Pennsylvania not served by any other of the carriers involved. Consolidated and Moran each operates from Binghamton, N. Y., to Philadelphia. Moran also has a direct route from Binghamton through Scranton, Pa., to New York City.

Lists of carriers which operate in the area served by Consolidated and Moran show 205 carriers, of which 60 are Class I carriers. Some of the principal competitors and their operating revenues in 1940 are as follows:

Akron-Chicago Transportation Co., Inc., Akron, Ohio.....	\$347,000
Interstate Motor Freight System, Detroit, Mich.....	9,907,000
Keeshin Motor Express Co., Inc., Chicago, Ill.....	5,902,000
Niagara Motor Express, Inc., Syracuse, N. Y.....	610,000
Onondaga Freight Corp., Syracuse, N. Y.....	438,000

Akron-Chicago Transportation Co., Inc., operates as a general-commodity common carrier in Illinois, Indiana, Ohio, Pennsylvania, and New York. In New York a network of routes covers practically all of the State west of Watertown, Utica, and Binghamton. The greater portion of the operations of Interstate Motor Freight System and Keeshin Motor Express Co., Inc., respectively, is in the Central and Middle Western States. Each operates between principal points in New York State but does not serve as wide a territory therein as either Con-

<sup>17</sup> Source of data with respect to revenues of carriers reporting to the Commission, pursuant to stipulation of the parties: Revenues, Expenses and Statistics of Class I Motor Carriers of Property, Statement No. Q-800, Year 1940, Interstate Commerce Commission, Bureau of Statistics. This compilation contains the following statement: "The total annual revenues of Class I carriers of property are probably less than half of the grand total for all motor carriers of property whose rates and service are subject to the jurisdiction of the Interstate Commerce Commission."

solidated or Moran. Keeshin Motor Express Co., Inc., connects with its affiliate, Seaboard Freight Lines, Inc., at Syracuse and, in conjunction, the two carriers render through service to New York City and New England points. Niagara Motor Express, Inc., operates entirely within New York State as a general-commodity common carrier over regular routes principally between Buffalo and Niagara Falls and Albany, via Rochester, Syracuse, and Utica, between Buffalo and Jamestown and Corning, between Rochester and Elmira and between Syracuse and Binghamton, with service to numerous off-route points in that area. Onondaga Freight Corp. transports general commodities over regular routes extending from Buffalo to Boston, via Rochester, Syracuse, Utica, and Albany, and from Albany to New York, serving all intermediate points. It also has authority to transport a wide variety of specified commodities<sup>18</sup> over irregular routes from and to numerous points in the New York area.

Taken from the standpoint of service between representative points in the area in which Consolidated and Moran compete, and considering only those carriers included in the lists referred to, which do not purport to be complete, the following shows the number of Class I carriers not involved in the proposed unification which operate over competitive routes between the points indicated:

Between	Class I Carriers
Albany, N. Y., and—	
Binghamton, N. Y.	11
Buffalo, N. Y.	18
Elmira, N. Y.	14
New York, N. Y.	26
588 Binghamton, N. Y., and—	
Buffalo, N. Y.	21
New York, N. Y.	20
Syracuse, N. Y.	18
Utica, N. Y.	13
Buffalo, N. Y., and—	
New York, N. Y.	20
Philadelphia, Pa.	49
Syracuse, N. Y.	24
Elmira, N. Y., and—	
Rochester, N. Y.	18
Syracuse, N. Y.	16
Philadelphia, Pa., and—	
Syracuse, N. Y.	17
Utica, N. Y.	16

The greater part of the operations here considered is embraced within New York State, and competition from carriers operating solely in intrastate commerce is of greater importance than in the other areas treated. Of Moran's revenues, 45 percent accrues

<sup>18</sup> Paper, candles, chemicals, fruits, vegetables, canned and preserved foodstuffs, paint and related commodities, petroleum products in containers, and merchandise dealt in by retail food stores.

from transportation of freight moving in intrastate commerce. Considerable competition is also afforded on traffic moving in interstate commerce, by carriers which operate physically within New York, under the exemption from the certificate requirements of the act contained in the second provision of section 206 (a).

Some competition, although of less relative importance, exists between the carriers involved in portions of the Middle Atlantic region other than New York State. Barnwell, Horton, and Southeastern operate in this territory but are principally concerned with traffic moving between points therein and the South, the situation respecting which will be discussed in the following subdivision of this chapter.

Barnwell's routes extend northward to Scranton, Pa., and New York City. On its main route between Washington and New York, via Baltimore and Philadelphia, it is authorized to serve all intermediate and certain off-route points. Service to points on its other routes in this region is generally restricted to traffic originating at or destined to points in Virginia or south thereof.

At Harrisburg, Reading, and Allentown, Pa., it is restricted 589 to delivery of traffic originating at New York. Southeastern's routes also extend to Scranton and New York, but it may not serve any point in this region except on traffic originating at or destined to Roanoke, Va., or points south thereof. Horton's routes extend northward in this area to Pittsburgh, Pa., Scranton, and New York, and it is authorized to serve without restriction Washington, Baltimore, a few other Maryland points, New York City, a number of Pennsylvania points including Philadelphia, Trenton, and New Brunswick, N. J., and points in northern New Jersey in the vicinity of New York City; otherwise, it is generally restricted to traffic moving to or from points south of the Potomac River. Consolidated's routes extend from New York to Philadelphia and Asbury Park and Atlantic City, N. J. With respect to such New Jersey points, it is not competitive with any of the other carriers involved. Arrow operates between the metropolitan area of New York City and numerous points in eastern Pennsylvania, but does not serve Philadelphia. Its routes extend northward to Binghamton, N. Y. Between the latter point and New York City it is in competition with Consolidated and Moran, and certain of its other routes are paralleled by those of Barnwell and Horton. Arrow is primarily concerned with traffic moving between the metropolitan area of New York and Pennsylvania points. It is the only one of the carriers involved having intrastate rights in Pennsylvania. It would be valuable to the unified operation as a feeder and connecting line.

Numerous carriers operate in this territory. An incomplete list of those competing with Arrow shows 148 carriers, of which 44 are Class I carriers. Many of those included in the lists of carriers operating in New York also operate in this area. Some of the carriers whose principal operations are in the area are:

The Davidson Transfer & Storage Co., Baltimore, Md.	\$1,576,000
Horlacher Delivery Service, Inc., Philadelphia, Pa.	1,062,000
Motor Freight Express Inc., York, Pa.	799,000
Richards Motor Freight Lines, Scranton, Pa.	828,000
York Motor Express, York, Pa.	1,302,000

<sup>1</sup> The amount shown represents this carrier's operating revenues in 1939, 1940 figures not being available.

590 Motor Freight Express operates as a common carrier of general commodities throughout most of the area here under consideration, its routes extending from New York on the north to Pottsville and Harrisburg, Pa., on the west and Washington on the south. York Motor Express conducts similar operations in the same general territory. Richards Motor Freight Lines conducts operations of the same character over a network of regular routes covering the eastern Pennsylvania points served by the carriers here involved, as well as the principal points served by Moran in New York State. Davidson transports general commodities over regular routes extending from Washington to New York, via Philadelphia, and over irregular routes between its terminal areas of New York, Philadelphia, Baltimore, and Washington, on the one hand, and, on the other, points in Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, and northern Virginia. Horlacher Delivery Service, Inc., conducts similar operations in the territory extending from Norfolk and Richmond, Va., to New York City. It serves substantially, if not all, points in Delaware and eastern Pennsylvania served by the carriers involved. Other carriers whose principal operations are in this territory and are described in Appendix A of the Transport Co. case are: Branch Motor Express Company, Kirby & Kirby, Inc., The Middlesex Transportation Company, Miller Transport Co., The Motor Haulage Company, Inc., New York and New Brunswick Auto Express Company, Freedman Motor Service, Inc., Pyramid Motor Freight Corporation, Shein's Express, Inc., and Smith and Solomon Trucking Company.

The following shows the number of Class I carriers, of those named in the lists referred to, and not involved in these trans-

actions, which operate over competitive routes between the representative points indicate:

591	Between	Class I Carriers
	New York City and—	
	Allentown, Pa.-----	28
	Baltimore, Md.-----	24
	Harrisburg, Pa.-----	24
	Philadelphia, Pa.-----	39
	Scranton, Pa.-----	24
	Sunbury, Pa.-----	19
	Washington, D. C.-----	22
	York, Pa.-----	21
	Baltimore, Md., and—	
	Harrisburg, Pa.-----	19
	Scranton, Pa.-----	13

The operating revenues in 1940 of 283 Class I motor carriers of property reporting to the Commission whose principal operations are in the Middle Atlantic region totalled \$97,449,156.<sup>19</sup> The revenues in 1940 of Arrow and Moran, which are the only carriers of those involved whose principal operations are in this region, totalled \$4,282,861.

**Southern Region:** The carriers involved whose principal operations are in the Southern region are Barnwell, Horton, Southeastern, and Transportation. Because of restrictions in its operating authority, Southeastern is only slightly competitive with any of the other carriers involved. While its routes are generally paralleled by those of Barnwell and Horton north of Roanoke, Va., it may transport only traffic originating at or destined to Roanoke or points south thereof. Aside from Roanoke, which is served by Barnwell, the only point south thereof on Southeastern's routes served by either Barnwell or Horton is Winston-Salem, N. C., which is served by Southeastern from the west and by Barnwell and Horton from the south and east. Southeastern's routes parallel those of Transportation between Bristol, Va., and Kingsport and Johnson City, Tenn., 24 and 25 route miles, respectively. Transportation's operations south of Atlanta, Ga., and from points in North and South Carolina to points in Tennessee are not competitive with those of any of the carriers involved. It competes with Horton between Atlanta and Charlotte, N. C. Between Charlotte and Great Falls, S. C., and other points in

North Carolina, including Burlington, Greensboro, and Winston-Salem, its operations are competitive with Barnwell and Horton, and it competes with Barnwell between Asheville, N. C., and Charlotte and Winston-Salem. The routes of Barnwell and Horton are generally parallel from Great Falls, S. C., on the south, to New York City and Scranton, on the north.

<sup>19</sup> See footnote 17.

Barnwell's routes between Greensboro, N. C., and Roanoke, Va., and between McColl, S. C., and Wilmington, Del., via Norfolk, Va., and the eastern shore of Maryland are not duplicated by those of any of the other carriers involved.

Lists of carriers operating in this territory, which as in the case of the other lists referred to do not purport to be complete, show 289 carriers, of which 67 are Class I carriers. These lists include some carriers competing with the southern carriers north of Washington only. Some of the principal competitors and their operating revenues in 1940 are:

Akers Motor Lines, Inc., Gastonia, N. C.	\$ 923, 000
Atlantic States Motor Lines, Inc., High Point, N. C.	729, 000
Brooks Transportation Company, Inc., Richmond, Va.	1, 350, 000
Harris Brothers Transfer Company, Charlotte, N. C.	518, 000
The Mason & Dixon Lines, Inc., Kingsport, Tenn.	1, 918, 000
Roadway Express, Inc., Akron, Ohio	2,224,000

Akers Motors Lines, Inc., operates as a common carrier of general commodities over irregular routes. It is authorized to transport such commodities between Gastonia, N. C., and points within 25 miles thereof, on the one hand, and points within 100 miles of Atlanta and 5 other Georgia points, on the other, and between said Georgia points and points in North and South Carolina, on the one hand, and, on the other, all points in New Jersey, Connecticut, Rhode Island, Massachusetts, and the District of Columbia, numerous points in Maryland, Delaware, Pennsylvania, and New York (including New York City), and points within 25 miles of Akron, Ohio. Atlantic States Motor Lines, Inc., conducts similar operations over a network of regular routes extending from Columbia, S. C., and Atlanta, on the south, and Asheville and Roanoke, on the west, to New York City. It also transports general and special commodities over irregular routes, generally between southern points, on the one hand, and points in the Middle Atlantic States, on the other.

593 Brooks Transportation Company, Inc., transports general commodities over regular routes, generally parallel to those of Barnwell and Horton, between Winston-Salem and Greensboro, N. C., and Roanoke, Va., on the one hand, and New York City, on the other. Harris Brothers Transfer Company conducts operations of the same character over regular routes between Charlotte and New York over several routes, with service to a number of Pennsylvania points, including Philadelphia. The Mason & Dixon Lines, Inc., competes with most of the operations here involved between Atlanta and New York, its routes extending from Atlanta and Charlotte on the south to Scranton and New York City, on the north. Roadway Express, Inc., operates as a common

carrier of general commodities in 24 States. So far as concerned here, it operates from Columbus, Ga., to New York City, via Atlanta, Greenville, S. C., Charlotte, Richmond, Baltimore, and Philadelphia. It also conducts irregular-route operations in North and South Carolina. Other carriers whose principal operations are in this territory and are described in Appendix A of the *Transport Co.* case are: Hampton Roads Transportation Company, Mundy Motor Lines, Rutherford Freight Lines, Incorporated, Super Service Motor Freight Company, and The Wright Line.

The following shows the number of Class I carriers, of those named in the lists referred to and not involved in the proposed transactions, which operate over competitive routes between representative points in the Southern region, and between points therein and certain points outside of such region. Service is considered only between points served in common by two or more of the carriers involved; i. e., only in those instances where there will be a lessening of competition.

		Class I Carriers
Between		
Asheville, N. C., and—		
Burlington, N. C.	-----	8
Charlotte, N. C.	-----	11
Atlanta, Ga., and—		
Burlington	-----	7
Charlotte	-----	10
504 Burlington and—		
Great Falls, S. C.	-----	7
Fayetteville, N. C.	-----	14
Charlotte and—		
Harrisburg, Pa.	-----	11
Lynchburg, Va.	-----	13
New York, N. Y.	-----	13
Philadelphia, Pa.	-----	13
Richmond, Va.	-----	17
Scranton, Pa.	-----	9
Washington, D. C.	-----	14
Winchester, Va.	-----	11
Lynchburg and—		
New York	-----	8
Richmond	-----	10
Washington	-----	9
Richmond and—		
Harrisburg	-----	11
New York	-----	16
Washington	-----	20
Roanoke and—		
Harrisburg	-----	7
New York	-----	8
Scranton	-----	4
Washington	-----	10
Winchester	-----	10

The operating revenues in 1940 of 92 Class I carriers of property reporting to the Commission whose principal operations are in the Southern region (composed of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia) totalled \$49,051,190.<sup>20</sup> The revenues in that year of Barnwell, Horton, Southeastern, and Transportation totalled \$7,955,230.

General: The foregoing clearly shows that if the proposed transactions were approved and consummated, there would be ample competitive motor-carrier service throughout the territory involved. In addition, all of the principal points and many others are served by one or more rail carriers. Competition is also afforded by motor-vehicle contract carriers, and by carloading and forwarding companies. The tabulations showing service between representative points include only carriers rendering single-line service, although effective competition frequently is afforded such carriers by combinations of two or more carriers through interchange. Nor do the tabulations reflect competition of overhead operations. For example, Spector Motor Service, Inc., which operates between many points in the Middle Atlantic and New England regions, on the one hand, to points in the Central States, on the other, is not included in the tabulations although actually operating between many of the points shown.

It seems that the Antitrust Division is more apprehensive over what it believes would be the indirect effect of the consolidation upon competition, than it is over the direct elimination of competition between the carriers involved. It alleges that the consolidation would bring into being the largest common carrier of property by motor vehicle in the United States, which appears to be true, and contends in effect that applicant, because of its extensive route coverage and large total revenues, would be so dominant in the territory that it would smother competition of remaining independent motor carriers. Experience has not demonstrated that such result would be likely to follow. There are a number of large property motor-carrier systems presently in existence, most of which operate in the Middle Atlantic and Central States, notably the Keeshin system, Interstate Motor Freight System, and U. S. Truck Lines system. There is no indication that anything approaching a monopoly has resulted in that territory from the formation and operation of those systems. Considering the great number of motor carriers presently operating, the small

<sup>20</sup> See footnote 17.

amount of capital required to enter the motor transportation field, and advantages in certain respects which smaller motor carriers have over larger ones through their more intimate relations with shippers and ability to render a more personalized service, it would seem that monopoly is little to be feared at this stage of the development of the trucking industry. It is not believed that applicant would be able to obtain any greater portion of the available traffic than the carriers involved now handle. It seems more likely that the proportion would be smaller. As shown by the testimony

596 of shipper representatives, there is a tendency among many shippers to divide traffic among competing lines. In the opinion of the general manager of one of the intervening motor carriers which competes with Barnwell and Horton, his company would be in a better position from a solicitation standpoint if those carriers were merged.

The Antitrust Division further argues that the combined volume of business of the carriers involved would give applicant such great bargaining power with connecting motor carriers for inter-line business that it could secure not only the larger portion of the traffic, but could demand as exchange the premium or higher rated freight; and that there would be created in applicant a "bottle neck" through which, in many cases shippers must send their traffic. Each of these contentions is based upon an incorrect premise that applicant would have the only available service between strategic points and that independent lines would be forced to interchange with it. As has been shown a carrier would have a choice of several carriers other than applicant with which to make interchange arrangements, and if not treated fairly would, no doubt, favor such other carriers. The bargaining power of applicant would necessarily have to be spread among numerous connecting lines and in the aggregate would be no more, and probably would be less, than that of the independent lines. Applicant would have little to gain and much to lose by adopting an unreasonable policy with respect to interchange, and its officers have expressed their intention of maintaining existing joint-rate and through-rate arrangements.

It is also contended that the consolidation would result in diversion of interchange traffic, presently delivered by the carriers involved to other connecting lines, to such an extent as to adversely affect those lines. It is no doubt true that applicant would haul unrouted freight to destination, when possible to do so; in other words, it would not short-haul itself. However, the traffic it would divert from connecting carriers probably would be equalized, to a large degree at least, by traffic which would be

597 diverted from it to such lines. To illustrate, a carrier operating between Boston and New York and presently interchanging with Barnwell at the latter point for southern destinations, after consummation of the proposed consolidation, would be likely to deliver traffic controlled by it to some other independent line rather than to applicant, which would then be a competitor of the delivering carrier.

The large size of a motor carrier which would result from a unification alone does not constitute sufficient ground for denial of an application. Application of such a policy would tend to freeze the motor-carrier industry at its present level. Such industry, compared with rail and water transportation, is still in its infancy, and arbitrary restrictions upon its natural development into large units would not appear to be in the public interest. There are many thousands of motor carriers of property subject to the Commission's jurisdiction. Many of these are very small, and, no doubt, small motor carriers will continue to have their place in the industry. On the other hand, it would seem that large motor-carrier systems, comparable in size and strength with units of competing forms of transportation, should also have their place in the industry. Recent legislation shows a Congressional intent to encourage railroad unifications. In view of the national transportation policy, as declared in the act, it cannot be supposed that Congress intended that the motor-carrier industry, a coordinate and competing form of transportation, should be discriminated against in such respect. On the contrary, considering the much greater number of motor carriers of property and their relative size as compared with railroads generally, the need of unifications in the trucking field is more apparent than in the case of railroads, which have already had many years of development. With respect to motor-vehicle passenger carriers, integration into large systems is considerably more advanced than in the trucking industry.

At the conclusion of the hearing, the Antitrust Division moved that all of the motor-vehicle common carriers of property  
598 interchanging freight in the metropolitan area of New York, Baltimore, and Philadelphia, including those lines involved in the proposed unification as well as others, be required to furnish the Commission information showing the tonnage received from and delivered to connecting carriers in New England and New York State for the last six months of 1940. Aside from the doubtful propriety of entering such a general order in a proceeding of this nature, concerning which no opinion is expressed, and the fact that such order would place a great physical

and financial burden upon carriers not parties to this proceeding, it is not believed that such information is essential to a determination of the issues involved. Accordingly, the motion should be denied.

The Commission should find:

1. That, if the proposed transactions were consummated, there would remain adequate motor-carrier competition between the points in the territory involved with respect to which there would be any elimination of competitive service as a result of such transactions.

2. That, between the principal points involved, substantial competition would be afforded the unified operation by rail carriers.

3. That the proposed transactions would not result in an undue restraint of competition.

Holders of applicant's common and preferred stock would be entitled to one vote for each share held. The preferred stockholders would be entitled to cumulative dividends of 6 percent per annum before any dividend are paid on the common stock and, in the event of liquidation, to \$105 per share plus accumulated dividends before distribution of any amount to common stockholders. At the option of the holders, preferred stock is convertible into common stock, as follows: During the first three years from date of issue, 4 of common for 1 of preferred; during the next three years, 3½ for 1; and thereafter, 3 for 1. Applicant may redeem the preferred stock within 5 years from date of issue at \$110 per share, and thereafter at \$105 per share, plus accumulated dividends in each instance.

Consummation of the contracts for acquisition of control of the carrier and affiliated non-carrier companies would require issuance by applicant of 648,643 shares of its common stock and 39,049 shares of its preferred stock, having a total par value of \$4,553,543. Of these shares, 1,107 of preferred and 15,472 of common, issuable to Barnwell Warehouse, would be subsequently cancelled, thus leaving outstanding 37,942 shares of preferred and 633,171 shares of common stock, having a total par value of \$4,427,371. As of April 30, 1941, the aggregate net worth of the corporations involved, according to their books, was \$5,077,992. After making adjustments as provided in the contracts, the aggregate net worth would be \$4,900,248.

Authority is sought by applicant under section 214 to issue (1) stock as set forth above to consummate the contracts for acquisition

of control, (2) necessary common stock, from time to time as required, in conversion of its preferred stock, and (3) 15,000 shares of preferred stock, to be offered and sold to the public, the proceeds of which would be used for working capital and general corporate purposes.

600 The highest conversion rate provided for is four shares of common for one of preferred. At that rate, to convert all preferred stock proposed to be issued, 54,049 shares, would require 216,196 shares of common stock. However, it is unnecessary to authorize issuance of common stock to convert the preferred stock deliverable to Barnwell Warehouse, which would be subsequently cancelled. Eliminating any amount for such purpose, the maximum number of shares of common stock required for conversion purposes would be 211,708, and the total amount of common stock for which authority would be required would be 860,411 shares.<sup>21</sup>

The 15,000 shares of stock proposed to be offered to the public would be sold at not less than par. No commitment with respect to such sale has been made and no underwriting agreement entered into. It is proposed that any underwriting agreement entered into shall be subject to the approval of the Commission, and the recommended findings will be conditioned accordingly. Sale at par of such stock would produce \$1,500,000. The proceeds would be used principally to increase cash account and to improve the ratio between current assets and current liabilities. As of April 30, 1941, the aggregate current liabilities and current assets, respectively, of the companies involved were approximately equal. Officers of each of the carriers testified to a present lack of adequate working capital, which is attributable, in part at least, to the large increase in their volume of business. A portion of such sum would be used for purchasing additional equipment and retiring outstanding obligations. Assuming unification in applicant of the properties involved, the addition of \$1,500,000 to its working capital is warranted, and issuance of stock for that purpose should be approved. Such addition would greatly improve its financial position and make it better able to withstand any recession  
601 in business that might occur. The dividend requirement upon all preferred stock proposed to be issued, including that issued to Barnwell Warehouse and subsequently retired, would be \$324,294, which is about one-half of the companies' aggregate

<sup>21</sup> The section 214 application, as amended, seeks authority to issue 880,311 shares of common stock. Such request is apparently based upon a miscalculation, as the maximum requirement, before elimination of common stock for conversion of preferred stock issuable to Barnwell Warehouse, would be 864,839.

net income, after provision for income taxes, in 1940, and about one-third of such net income for 1939.

Pro forma balance sheet statement of applicant as of June 30, 1941, giving effect to consolidation into itself of the companies involved and to the issuance of securities as proposed, and reflecting elimination of all intangible items presently carried on such companies' books, shows assets<sup>22</sup> aggregating \$10,950,946, consisting of: Current assets \$4,263,616, including cash \$1,956,858, working funds \$68,693, accounts receivable, less reserve for uncollectible accounts; \$1,372,332, and material and supplies \$667,172; tangible property, less depreciation, \$5,516,399; organization expense \$107,136;<sup>23</sup> investments and advances \$176,204; and deferred debits \$887,591, principally prepaid tires \$487,553. Liabilities would be: Current liabilities \$2,827,373, chiefly accounts payable \$1,243,959 and taxes accrued \$726,186; advances payable \$127,111; equipment obligations \$867,336; other long-term obligations \$397,406; reserves \$197,644, including injuries, loss and damage reserves \$75,283, and reserve for income taxes \$108,673; deferred income \$62,353; capital stock—preferred \$5,294,200 and common \$704,651;<sup>24</sup> and unearned surplus \$472,872.

The foregoing reflects a capitalization of \$7,263,593, comprised of capital stock \$5,998,851, and equipment and long-term obligations \$1,264,742. The following capitalizable assets appear in support of such capitalization:

602	Cash	\$1,956,858
	Working funds	68,693
	Material and supplies	667,172
	Tangible property	5,516,399
	Prepaid tires	487,553
	Total	8,696,675

The total shown would be \$1,433,082 more than applicant's capitalization. Considering all the circumstances, including the past earnings of these companies, the proposed capitalization does not appear to be excessive.

The National Industrial Traffic League, herein called the League, contends that the situation here with respect to capitalization is similar to that presented in the Transport Co. case and would require the same conclusion. While the reasoning behind such contention is not clearly defined, it is argued in effect that

<sup>22</sup> For the purpose of such balance sheet valuation of assets was adjusted in accordance with the contract provisions previously described. The total value would be slightly higher if book values were used. Assets and liabilities of the companies involved are as of April 30, 1941. Past earnings of these companies would indicate that their net worths would be greater now than as of April 30, 1941.

<sup>23</sup> Represents \$8,136 expended as of June 30, 1941, \$9,600 for data purchased from The Transport Company, and \$30,000 estimated additional expenditures for prosecution of instant applications and completion of applicant's organization.

<sup>24</sup> Includes 11,278 shares of common stock issued by applicant subsequent to June 30, 1941.

the common stock would have an actual future value greater than its par value, and would subsequently find its way into the hands of the public at such greater value; that using such future value instead of par value in determining applicant's capitalization, such capitalization would not be supported by tangible assets and, therefore, is objectionable. Upon analysis, the unsoundness of such contention is readily apparent.

If any value greater than book value be attributed to applicant's common stock, it must necessarily be based upon intangible assets and past and prospective earnings of the carriers involved. Obviously, it would be inconsistent and unjust to consider intangibles and earnings for the purpose of determining the value of applicant's stock, and thus, under the League's theory, the amount of its capitalization, and then to find that such capitalization is excessive because supported by intangibles and earnings. In effect, this is what the Commission is asked to do. Following the League's theory, a carrier's capitalization would fluctuate with the market value of its stock, and a carrier with poor earnings whose stock was selling at a discount could more easily justify issuance of additional securities than a carrier with equal assets and good earnings whose stock was selling at a premium.

603 It should be emphasized that applicant is assigning no value to its common stock, other than par value, and is not proposing to sell any of such stock to the public. Thus, the situation is radically different from that existing in the Transport Co. case, as illustrated by the following excerpts from the majority decision and the concurring expression of Chairman Eastman, respectively:

"The par value of the securities would not exceed the value of such [tangible] assets, but we cannot ignore the fact that it is proposed, and it would be necessary in order to finance the transactions, to sell the common stock at prices 20 or more times the par value.

"If we approve the proposed unification, therefore, it will be with a full understanding of the fact that it cannot be carried into effect without sale by applicant of a large amount of its common stock at \$20 per share. The inference will be that we believe that this stock not only can be but should be sold at such a price, as being within its reasonable value. No doubt effective use of such an inference would be made in selling the stock to the public, as is contemplated, at a price in excess of the \$20 per share."

Approval of the instant transactions would not entail any finding by the Commission that the common stock proposed to be issued has a greater value than par, and, if subsequently the public

wished to buy such stock at a greater price, any such purchase would be at its own risk and not in reliance upon anything this Commission had found or said. Obviously, the Commission cannot control all future selling prices of stock, issuance of which it authorizes, and, contrary to the League's expressed fears, would not, and could not, under the law, base rates on stock quotations.

The Antitrust Division contends that any securities offered to the public should be sold pursuant to competitive bids. Considering the type of securities involved, the newness of the enterprise, and the unfamiliarity generally of the public with motor carrier securities, there is grave doubt whether marketing of the securities through competitive bids would be feasible. It is believed that the proposed condition, requiring approval by the Commission of any agreement entered into for the disposition of the securities, will adequately protect the situation.

604 Question arises as to whether the great disparity, from the standpoint of par value, between the voting rights of the preferred and common stock proposed to be issued would be consistent with the public interest. The holder of a share of \$1-par-value common stock would have equal voting power with the holder of a share of \$100-par-value preferred stock. Preferred stockholders as such would be unable to elect a single member of applicant's board of nine directors. It has been found that concentration of control of a carrier in the hands of persons having a relatively small investment therein is not always compatible with the public interest.<sup>25</sup> It must be remembered, however, that the par value of applicant's common stock would not, and does not purport to, represent the amount of investment, but rather an undivided interest in applicant, undefined in amount, derived from the contribution to applicant, by the persons receiving such stock, of going businesses. It should also be recognized that, in view of the preferential treatment of preferred stockholders, common stockholders are ordinarily entitled to control. Nevertheless, considering the amount of preferred stock which would be outstanding, in the examiner's opinion the public interest requires that holders of such stock be given greater voting power than is proposed. Accordingly, a condition to obtain such result will be incorporated in the proposed findings. Upon the basis of the proposed stock issue, such condition would assure the preferred stockholders the power to elect one-third of the members of applicant's board of directors, as now constituted, so long as dividends on preferred stock do not become three years in arrears. If such dividends become in arrears for three years or more, the

<sup>25</sup> Compare *Consolidated Freight Lines, Inc.—Stock*, 5 M. C. C. 749, 755; *Unification of Southwestern Lines*, 124 I. C. C. 401, 438.

preferred stockholders would have the power to control applicant until such arrears are paid. While somewhat arbitrarily arrived at, such arrangement would appear to be equitable under all the circumstances.

605 Upon consolidation into itself of the companies involved, applicant would be required to assume all of their liabilities. Certain of these companies have outstanding securities with respect to which assumption of obligation by applicant would require authority under section 214. It is probable that some of these securities will be liquidated prior to actual consolidation. Applicant represents that, prior to consolidation, it will make appropriate application for requisite authority under section 214 to assume obligations with respect to any securities of the companies involved which then may be outstanding.

The Commission should find:

1. That acquisition of control of the carriers involved in No. MC-F-1612 and affiliated noncarrier companies would require issuance by applicant of 648,643 shares of its common stock and 39,049 shares of its preferred stock, having an aggregate par value of \$4,553,543.

2. That the aggregate net worth of the corporations of which control would be acquired is approximately \$4,900,000.

3. That, if the proposed acquisitions of control were consummated, an addition to applicant's capital of \$1,500,000 for working capital and other corporate purposes would place it, and the carriers involved upon a sounder financial basis, and is reasonably necessary for that purpose.

4. That upon consummation of the proposed transactions applicant would have adequate capitalizable assets to support the securities proposed to be issued.

5. That any authority herein granted for the issuance of securities should be conditioned as follows:

- (a) Prior to the exercise of any such authority applicant's articles of incorporation shall be amended (and evidence of such amendment furnished the Commission) so as to provide that holders of its preferred stock shall be entitled to six votes for each share of stock held, in lieu of one vote as presently provided, and that, in the event of default in payment of dividends upon such preferred stock for three years or more, thereafter, until all dividends in arrears on such stock are paid, the preferred stockholders, voting separately as a class, shall be entitled at any stockholders meeting held for that purpose to elect a majority of applicant's board of directors.

- (b) No preferred stock shall be issued for sale to the public as proposed until any agreement or agreements entered into or pro-

posed to be entered into, by applicant for the sale or underwriting of such stock shall first be approved by this Commission.

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## GENERAL

The League refers to the plan adopted by the Commission on December 9, 1929, 159 I. C. C. 522, for the consolidation of railroads, and asserts that the consolidation here proposed does not conform to the pattern specified therein, particularly with respect to size and territorial and geographical extent. Congress has seen fit to repeal the former provisions of section 5 requiring railroad consolidations to conform to such a plan. Moreover, it hardly seems necessary to point out that considerations which might govern in the consolidation of railroads differ radically from those to be applied to motor carriers. Considering the practice of railroads with respect to exchanging equipment and the necessity even under single ownership of switching cars and making up trains at important junction points, the advantages to be derived from inter-territorial service by a single railroad are not so readily apparent as in the case of motor carriers, whose smaller transportation unit makes possible a more flexible service. Many motor carriers presently render single-line service between the Southern, Middle Atlantic, and New England regions, and such service is also rendered through interchange by combinations of motor carriers. Undoubtedly, there is a substantial movement of freight between such regions. Applicant's routes, in general, conform to the natural flow of freight along the Atlantic seaboard, and approval of the proposed consolidation would not disrupt existing routes and channels of trade, but would make possible more expeditious and economical handling of traffic moving over such routes.

The League also contends that the advantages inherent in highway transportation have to do largely with short-hauls and, inferentially at least, that approval of the proposed consolidation would foster uneconomical long-haul transportation. As to what is an economical haul for a motor carrier cannot be measured by distance alone. Many other factors must be taken into consideration, such as the kind of roads and topography of the country to be traversed, the products to be hauled, the urgency of delivery, and the availability of other methods. In many cases what was considered an uneconomical haul a few years ago is now considered economical; and, no doubt, hauls that are considered uneconomical today will not be considered so within a few more years. The proposed unification would encourage long-haul traffic only to the extent that, through the unification, applicant might be able to offer a better service, or service at lower rates, than the

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independent carriers can now offer. If "uneconomical" long-hauls are to be discouraged, the most appropriate means of doing so would be through the fixing of compensatory rates and not through arbitrary limitation of the route mileage over which a carrier might operate. Such a limitation would fail to take into account any of the other factors mentioned. In prior cases under section 5 the Commission has not undertaken to so limit the extent of a carrier's operations.<sup>20</sup>

The Antitrust Division contends that possession by banking houses of financial interests in applicant is contrary to the public interest and that, under such circumstances, approval of the unification, if given, should be conditioned upon complete divestment of such interests. Eliminating from consideration the 15,000 shares of preferred stock proposed to be offered the public, agreement covering the sale of which would be subject to the Commission's approval, upon consummation of the transactions, Kuhn, Loeb and Company, through The Transport Company, would own 6,877 shares of applicant's preferred stock and 67,167 shares of its common, or 18.13 and 9.53 percent, respectively, of that outstanding. If the recommendation herein made for increasing the voting power of the preferred stock were adopted, Kuhn, Loeb and Company would hold 11.63 percent of the aggregate voting power. Phoenix Securities Corporation would own 2,067 shares of preferred and 42,617 shares of common, or 5.45 and 6.05 percent, respectively, of that outstanding. On the basis just mentioned, it would possess 5.90 percent of the aggregate voting power.

609 The record establishes that there is no connection between the two companies mentioned. Kuhn, Loeb and Company's stock would be derived primarily from its interest in Arrow. Phoenix Securities Corporation's interest would result from its long-standing ownership of approximately one-third of the stock of Consolidated. Contrary to the argument of protestant, it is clear that Kuhn, Loeb and Company did not sponsor the proposal now under consideration. Agreements were executed with all of the other companies while negotiations respecting the acquisition of Arrow's stock were under way and before any final agreement thereon had been reached. Consummation of each of the contracts is specifically conditioned upon approval by the Commission of acquisition by applicant of control of Barnwell, Consolidated, Horton, McCarthy, and Moran, but Arrow was not included as one of the essential companies.

It is apparent that neither of the banking houses mentioned would be able to control applicant, nor could they do so even if

<sup>20</sup> See *Keeshin Transcon. Freight Lines, Inc.—Control—Seaboard*, 5 M. C. C. 25; *Mid-States Freight Lines, Inc.—Consolidation*, 36 M. C. C. 1; *System Freight Service—Merger*, 36 M. C. C. 601; *Consolidated Freightways, Inc.—Purchase—Volk Brothers*, 37 M. C. C. 95; and *Yellow Cab Transit Co.—Purchase—Ethington*, 37 M. C. C. 20.

they acted in concert. While no one interest would own a majority of applicant's stock, the Horton interests would more nearly approach control than any other. H. D. Horton, with members of his family, would own 14,917 shares of applicant's preferred stock and 267,873 shares of its common, or 39.32 and 38.01 percent respectively, of that outstanding. Ownership by banking houses of minority interests in carriers of itself has not been demonstrated to be inconsistent with the public interest. In any event, it is obvious that imposition of a condition such as requested would not accomplish the desired result, as the Commission could not prevent future acquisitions of stock by the same interests, unless control or management in a common interest of two or more motor carriers was thereby effectuated.

In arguing for denial, protestants have frequently compared the instant transactions with those disapproved in the Transport Co. case. Apart from the fact that the carriers here involved were, with 21 others, involved in that case, there is little similarity between such proposed transactions. In the previous case, 610 substantially all of the consideration for the properties was to be paid in cash, to be obtained from the public; here the stockholders of the carriers are to receive no cash. In the Transport Co. case, large promotional and organizational fees were to be paid; here no fees are to be paid to promoters or organizers. It is true that those participating in the organization have been issued certain common stock for which payment was made at par; but even if it be assumed, as contended, that such stock will have a greater value than par, the only effect would be to reduce the value of the remaining common stock issuable under the respective contracts. This is equally true of the 9,000 shares of common stock issued to The Transport Company. The public interest is not concerned with the number of shares into which the parties divide their equity in applicant so long as its capitalization is not excessive. In the prior case, numerous employment agreements at substantial salaries were entered into in contemplation of the proposed unification; here no such employment agreements have been made.<sup>27</sup> No question is presented here as to unreasonable considerations, property appraisals, or capitalization of earnings or intangibles. The fewer number of carriers involved in the instant proposal makes the question of possible restraint of competi-

<sup>27</sup> All employment agreements made by the companies here involved in contemplation of the previously proposed unification have been cancelled with the exception of agreements between Arrow and four of its principal officers and stockholders. Arrow has agreed, if the instant transaction is consummated, to pay one of such persons \$12,000 (which sum was deducted from Arrow's net worth in determining the consideration) for cancellation of the agreement with him. The remaining agreements are with persons who are not directly involved in the instant transaction and who would not secure any of applicant's stock. They are unwilling that their agreements be cancelled, and, in view of the absence of any proprietary interest by them in the enterprise, applicant desires that continued service by them be assured through such employment agreements.

tion less of a factor. The carriers involved in the prior case, but not in the present one, alone would furnish substantial competition to applicant throughout much of the territory involved.

The proposed unification is predominately an end-to-end consolidation of complementary operations, but having sufficient overlapping to make possible eliminations of duplications necessary in order to provide economies and to release for other  
611 business equipment and terminal space presently so vital.

The unified operation would offer the public a more complete service in a large area along the eastern seaboard. It would be of sufficient size to make possible public financing for provision of working capital and additional facilities, if subsequently required, and to command reasonable purchasing power in the acquisition of equipment, insurance and credit. The principal officers of the respective companies would remain with the organization, and local management in the various divisions of the system would be left largely in their hands. Their continued participation and efforts to advance applicant's welfare are assured by their proprietary interest. The fact that these men, practically all of whom have had considerable experience and success in the motor-carrier industry, are willing to transfer control of properties, from which they are deriving good earnings, without receiving any monetary consideration, itself speaks well for the chances of success of the enterprise. Many of them have had experience in unifying motor-carrier operations on a smaller scale and are conversant with the economies and advantages to be derived therefrom.

The benefits which would accrue from a unification of this sort are particularly important at this time because of the increasing demand for transportation facilities, on the one hand, and an impending shortage of equipment, on the other. In the past, the carriers involved have been able to expand their facilities to take care of the growing volume of business through use of earnings. Increasing income taxes will substantially lessen their ability to do this. Sale of stock to the public by these carriers individually for raising addition capital is not feasible, and extensive use of credit for expansion of facilities would place them in such a precarious financial position that their solvency would be jeopardized in the event of a recession in business.

The Commission should find:

1. That acquisition by Associated Transport, Inc., of control of Arrow Carrier Corporation, Bardwell Brothers, Incorporated, Consolidated Motor Lines, Incorporated, Horton Motor  
612 Lines, Incorporated, McCarthy Freight System, Inc., M. Moran Transportation Lines, Inc., Southeastern Motor Lines, Incorporated, and Transportation, Incorporated, through purchase of their capital stock, and subsequent consolidation into

Associated Transport, Inc., of the operating rights and properties of the carriers named, for ownership, management, and operation, upon the modified terms and conditions above set forth, which terms and conditions as so modified are found to be just and reasonable, will be consistent with the public interest, and that the transactions proposed are within the scope of section 5 (2) (a).

2. That issuance by Associated Transport, Inc., of not exceeding 54,049 shares of preferred stock and 860,411 shares of common stock, for the purposes and upon the modified terms and conditions above set forth, (a) is for a lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for and consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.

An appropriate order should be entered.

ASSOCIATED TRANSPORT, INC.—CONTROL—ARROW CARRIER CORPORATION, ET AL., ASSOCIATED TRANSPORT, INC.—  
ISSUANCE OF SECURITIES

Balance Sheet Statements of Companies Involved as of April 30, 1941 (a)

ASSETS	Carriers						Non-carriers				Total	
	Arrow Car- rier Corpo- ration	Barnwell Brothers, Incorpor- ated	Consoli- dated Mo- tor Lines, Incorpor- ated (b)	Horton Motor Lines, In- corporated	Mc- Carthy Freight System, Inc. (b)	M. Moran Transport- ation Lines, Inc. (c)	South- eastern Motor Lines, In- corporated	Transporta- tion, Incor- porated	Barnwell Ware- house & Brokerage Company	Brown Equip- ment & Manu- facturing Company		Conner Realty Company
Current Assets												
Cash	\$62,432.69	\$26,554.90	\$216,229.13	\$43,614.33	\$55,164.81	\$79,602.60	\$4,283.78	\$5,644.87	\$223.70	\$5,014.14	\$108.41	\$1,175.36
Working funds	3,295.00	7,570.00	11,985.03	47,425.00	765.00	2,540.00	2,335.00	3,913.23		375.00		
Special deposits	527.50	580.00	995.00	14,449.56	7,357.00	98.00	745.00	11,113.22		15.70		
Temporary cash invest- ments			10,034.35									
Notes receivable		807.33	36,421.05	330.00								
Receivables from Associated com- panies									9,164.86	183,916.30	6,077.60	
Officers and employ- ees	4,716.51	8,939.85	1,445.07	15,461.45	7,105.21	153,409.68	1,562.08	2,034.59		497.24		
Accounts receivable, less reserve for uncollectible accounts	120,709.02	203,528.61	257,139.68	289,732.08	167,661.31	175,757.79	47,031.89	84,487.34	140.00	3,219.25		
Subscribers to capital stock				4,955.30								284.00
Interest and dividends receivable			1,405.65									
Material and supplies	14,872.63	62,427.81	124,614.57	113,667.18	81,849.95	32,749.90	8,166.08	30,732.41		156,739.11		
Other current assets		50.30					510.00					
Total	306,573.35	310,156.89	660,269.53	529,434.90	334,043.58	444,247.97	59,633.83	137,915.66	9,628.57	349,775.73	4,246.01	1,809,563,050.53

## APPENDIX A—Continued

	Carriers						Non-carriers					Total	
	Arrow Car- rier Corpora- tion	Barnwell Brothers, In- corporated	Consoli- dated Motor Lines, In- corporated (b)	Horton Motor Lines, In- corporated	Mc- Carthy Freight System, Inc. (b)	M. Moran Transporta- tion Lines, Inc. (c)	South- eastern Motor Lines, In- corporated	Harnwell Transporta- tion, In- corporated	Barnwell Ware- house & Brokers Company	Brown Equip- ment & Manu- facturing Company	Conger Realty Company		New England Termi- nals, Inc.
<b>ASSETS—continued</b>													
Current Assets													
Tangible Property, Less De- preciation	\$763,722.80	\$34,622.03	\$751,519.52	\$1,401,978.62	\$367,900.75	\$475,440.29	\$46,354.45	\$237,131.01	\$5,563.51	\$38,541.42	\$419,096.08	\$201,293.50	\$5,326,444.16
Intangible Property, Less Amortization	30,747.35	11,966.87	2,611.62	5,009.11		1,000.00	10,528.17	64,705.66		777.66		310.82	127,680.26
Investment Securities and Advances	85,795.46	8,393.29	98,830.64	115,395.32	65,553.11	6,711.25	510.00		40,300.00				335,883.62
Deferred Debits		76,966.74	177,672.14	73,834.13	28,997.19	118,830.58	8,444.01	38,674.39	678.35	2,612.04	6,361.13	1,032.62	619,919.38
Grand Total	1,080,839.05	942,500.82	1,060,903.45	2,125,702.08	827,154.03	1,046,230.10	165,470.46	478,426.74	\$9,970.42	\$301,708.45	\$431,653.19	\$204,462.00	9,400,305.99
<b>LIABILITIES</b>													
Current Liabilities:													
Notes payable:	5,000.00	85,127.56		39,728.42	13,500.00		24,000.00	91,804.46		27,500.00			26,600.44
Payable to:													
Associated compa- nies		9,164.86		187,307.77						900.00			197,372.63
Officers and employ- ees			188.07		9,092.40	17,581.90		12,957.17					45,184.52
Accounts payable	64,373.28	138,629.50	279,559.00	125,726.92	124,731.26	442,359.59	23,304.83	213,602.90	.84	63,927.97	456.10		1,406,072.82
Wages payable	30,714.46	13,801.25	49,018.83	44,289.95	23,454.90	35,405.94		6,771.06		1,047.21			298,444.20
C. O. D.'s unremitted	12,479.92		604.90		11,931.26	1,342.15	752.54						27,510.86
Taxes accrued	23,802.65	18,964.94	144,313.36	197,432.57	50,913.49	77,557.21	10,137.51	6,460.54	2,631.19	51,329.91	38,409.66	300.65	620,556.96
Interest accrued	260.00	1,064.39	832.67	130.00	3,497.79								7,189.63
Other current liabilities	1,244.99		5,651.71	4,387.86	3,029.00	2,546.34			178.75	72.95	828.00	194.11	13,949.40
Total	139,373.25	272,208.46	481,071.23	599,063.49	237,244.03	577,023.12	38,404.88	331,638.73	2,710.791	34,873.61	97,600.76	508.76	2,871,541.16
Advances Payable					3,149.42	123,901.27		29,277.17			37,700.88	55,000.16	309,103.90

Equipment and Other Long-Term Obligations	56,797.71	144,733.47	390,538.32	172,830.44	300.00	108,682.47	10,500.00	765,000.00	117,033.28	1,146,116.69
Reserve			36,061.61	11,929.31	5,529.90					55,642.77
Capital Stock:										
Preferred stock	138,000.00	32,300.00		58,320.00			22,500.00			246,420.00
Common stock, less re-acquired shares	98,825.00	100,000.00	11,445.00	212,080.00	35,400.00	25,000.00	2,000.00	100,000.00	20,000.00	855,720.00
Premiums and assessments on capital stock			419,486.04	10,000.00						429,486.04
Capital stock subscribed				5,520.00						5,520.00
Total	295,825.00	132,300.00	430,931.04	280,920.00	35,400.00	25,000.00	24,500.00	100,000.00	20,000.00	1,532,178.04
Unappropriated Surplus:										
Unearned surplus	673,841.06	393,318.87	351,602.25	1,233,849.08	304,245.80	56,975.58	31,259.64	150,834.84	31,265.55	41,894.70
Earned surplus			352,601.25	1,233,849.08	304,245.80	56,975.58	31,259.64	150,834.84	31,265.55	11,855,493.408,921.73
Total	673,841.06	393,318.87	704,203.50	2,467,698.16	608,491.60	113,951.16	62,519.28	301,669.68	62,531.10	52,746.10
Grand total	1,066,839.05	942,560.82	1,600,903.45	1,225,702.08	1,046,230.10	165,470.46	69,270.42	391,708.45	192,466.09	400,305.99

NOTES.—(a) Unless otherwise indicated. (b) As of May 17, 1941. (c) As of April 26, 1941. (Dr) Debit balance.

## APPENDIX B

ASSOCIATED TRANSPORT, INC.—CONTROL—ARROW CARRIER CORPORATION ET AL.  
ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

Comparative Statement of Revenue and Net Income of Companies Involved  
For the Years 1932 to 1940, Inclusive, and Four-Month Periods Ending April 30, 1940 and 1941

CARRIERS	1932	1933	1934	1935	1936	1937	1938	1939	1940	Four Months Ending April 30	
										1940	1941
<b>Arrow Carrier Corporation:</b>											
Revenue	\$686,018.93	\$724,836.82	\$783,320.07	\$790,291.81	\$860,110.70	\$979,645.35	\$1,060,116.56	\$1,510,477.46	\$1,468,001.13	\$475,107.87	\$506,043.63
Net Income:											
Before income taxes	38,244.56	61,674.20	77,792.01	53,524.37	6,505.94	D 23,181.92	38,833.28	147,134.77	92,564.17	16,319.40	71,663.21
After income taxes	32,580.76	49,982.47	66,907.45	45,805.06	6,582.79	D 23,181.92	30,595.91	117,134.03	70,660.51	16,319.40	71,663.21
<b>Barnwell Brothers, Incorporated:</b>											
Revenue	346,466.60	485,365.65	563,064.51	755,766.76	1,076,070.32	1,100,453.94	1,385,252.70	1,879,089.51	2,006,670.71	641,454.07	832,836.20
Net Income:											
Before income taxes	3,190.87	19,074.69	1,935.18	43,520.37	54,626.09	D 43,560.91	70,622.07	160,997.59	84,044.75	D 3,728.79	94,133.64
After income taxes	2,473.69	15,087.37	1,535.94	34,346.26	47,053.31	D 43,560.91	54,343.64	123,408.88	67,845.01	D 3,728.79	67,907.83
<b>Consolidated Motor Lines, Incorporated:</b>											
Revenue	1,218,666.57	1,304,231.29	1,677,121.04	1,860,226.69	2,156,136.91	2,778,533.73	3,767,746.32	4,571,455.85	4,562,536.36	1,578,776.52	2,075,870.82
Net Income:											
Before income taxes	4,627.89	D 80,432.17	D 9,894.11	60,237.08	D 30,721.59	D 121,200.34	87,180.15	56,108.48	188,083.00	14,902.27	262,083.20
After income taxes	4,202.91	D 80,432.17	D 9,894.11	52,047.33	D 30,721.59	D 121,200.34	70,568.91	71,971.42	130,331.54	14,902.27	262,083.20
<b>Horton Motor Lines, Incorporated:</b>											
Revenue	253,354.40	497,027.47	657,159.65	880,933.79	1,260,839.65	2,654,719.18	2,813,477.25	3,825,603.40	4,250,083.69	1,300,152.38	1,766,666.52
Net Income:											
Before income taxes	12,519.48	20,465.99	D 1,244.54	74,506.03	164,814.79	148,120.60	334,509.03	508,244.47	308,907.81	70,450.06	266,668.54
After income taxes	8,303.61	13,514.31	D 6,063.42	63,100.43	136,646.63	107,263.36	265,390.05	392,540.95	197,084.45	70,450.06	266,668.54



## APPENDIX B—Continued.

	1932	1933	1934	1935	1936	1937	1938	1939	1940	Four Months Ending April 30	
										1940	1941
NONCARRIERS—con.											
Brown Equipment & Manufacturing Company:											
Revenue								\$499,402.42	\$556,517.05	\$287,494.94	\$274,310.85
Net Income:											
Before income taxes								91,345.08	159,381.49	55,003.00	45,049.43
After income taxes								65,810.02	112,437.87	39,490.72	31,501.00
Conger Realty Company:											
Revenue								54,120.00	119,203.22	34,000.00	42,200.00
Net Income:											
Before income taxes								41,540.72	87,145.01	25,477.00	34,424.92
After income taxes								31,029.10	61,028.26	18,057.15	23,824.78
Southern New England Terminals, Inc.:											
Revenue								6,466.06	17,190.90	3,699.90	9,133.32
Net Income:											
Before income taxes								D 152.28	3,318.90	3,018.99	7,632.75
After income taxes								D 152.28	2,820.00	3,018.99	7,632.75
Total Noncarrier Companies:											
Revenue								630,543.82	1,037,406.90	362,373.90	330,075.84
Net Income:											
Before income taxes								153,907.21	305,228.02	95,907.07	98,304.90
After income taxes								114,478.17	189,516.11	70,494.74	63,910.99
Total All Companies:											
Revenue								18,047,062.54	19,742,761.36	6,229,918.04	7,987,054.05
Net Income:											
Before income taxes								1,340,520.78	1,121,083.90	196,903.53	303,364.70
After income taxes								970,721.66	758,704.53	173,501.20	783,096.72

Data not of record.

ASSOCIATED TRANSPORT, INC.—CONTROL—ARROW CARRIER CORPORATION ET AL., ASSOCIATED TRANSPORT, INC.—  
ISSUANCE OF SECURITIES

Net Worth as of April 30, 1941,\* and Net Income for Fiscal Year Ended on That Date of Companies Involved and Consideration for Stock Proposed To Be Acquired by Associated Transport, Inc.

	Net Worth		Net Income		Consideration		
	Per Books	Adjusted	Per Books	Adjusted	Stock of Associated Transport, Inc.		
					Preferred	Common	Total
<b>CARRIERS</b>							
Arrow Carrier Corporation	\$910,666.06	\$917,887.92	\$126,004.32	\$148,376.89	\$687,700.00	\$55,989.00	\$743,689.00
Barnwell Brothers, Incorporated	525,018.87	491,459.29	165,727.44	128,318.70	366,000.00	53,039.00	419,039.00
Consolidated Motor Lines, Incorporated	6,783,532.29	742,286.96	306,925.95	263,812.85	587,200.00	114,620.00	701,820.00
Horton-Motor Lines, Incorporated	1,514,769.08	365,342.06	334,837.80	423,536.98	1,178,000.00	178,069.00	1,356,069.00
McCarthy Freight System, Inc.	411,528.99	422,021.83	170,162.16	133,148.90	328,300.00	57,193.00	385,493.00
M. Moran Transportation Lines, Inc.	339,045.80	331,451.91	92,259.05	76,025.93	221,400.00	64,386.00	285,786.00
Southeastern Motor Lines, Incorporated	106,975.58	99,811.32	38,501.42	45,324.75	79,000.00	21,793.00	100,793.00
Transpacific, Incorporated	8,840.37	19,48,263.12	12,789.70	122,051.17	79,000.00	5,335.00	84,335.00
Total Carrier Companies	4,901,977.04	4,462,035.17	1,221,468.54	1,198,990.83	3,447,600.00	550,914.00	3,998,514.00
<b>NON-CARRIERS</b>							
Barnwell Warehouse & Brokerage Company	56,059.64	115,390.38	3,415.59	3,424.03	122,200.00	16,876.00	139,076.00
Brown Equipment & Manufacturing Company	256,534.54	262,745.40	104,525.42	104,692.71	299,000.00	46,094.00	345,094.00
Conner Realty Company	131,265.55	131,318.31	6,868.89	6,217.75	104,700.00	30,968.00	135,668.00
Southern New England Terminals, Inc.	31,525.40	29,434.98	7,440.16	8,613.30	21,400.00	3,771.00	25,171.00
Total Non-Carrier Companies	476,015.43	438,208.07	182,247.06	184,917.79	457,300.00	97,729.00	555,029.00
Total All Companies	5,377,992.47	4,900,243.24	1,403,415.50	1,383,908.62	3,904,900.00	648,643.00	4,553,543.00

\* Unless otherwise indicated. \* As of May 17, 1941.

† As of April 26, 1941.

‡ Period ended May 17, 1941.

§ Period ended April 26, 1941.

† Excludes investment in stock of Barnwell Brothers, Incorporated.

‡ Deficit.

§ Debit balance.

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Exceptions of the Antitrust Division, Department of Justice, to  
the proposed report by the examiner and brief in support of  
exceptions*

(Filed Dec. 17, 1941)

## STATEMENT

The unusual nature and importance of this proceeding requires in the view of this Division a brief preliminary statement to the exceptions and brief in support thereof which follow.

In a brief filed herein prior to the Examiner's proposed report this Division stated that competition in the transportation field and not regulated monopoly is the national policy. Congress has enunciated this policy in numerous acts including the Interstate Commerce Act and the antitrust laws. And this policy comprehends competition not alone between different forms of public carriage, but competition between carriers within each form  
621 including common carrier transportation by motor vehicle.

The commission has in many decisions given effect to the legislative will. The Examiner, however, proposes in this proceeding that the Commission by administrative order take the first long step towards regulated monopoly.

The Examiner seeks legal justification for the proposed giant merger of strongly competing common carrier truck lines in the Transportation Act of 1940, which amends and supplements the Interstate Commerce Act. His interpretation of that Act, which will be considered herein, will not only be of interest to the transportation industry, and to the public who pays the transportation bill, but should be particularly illuminating to those who sponsored this legislation in Congress.

No portion of the proposed report, however, is more worthy of rejection than the "chapter" on competition. In a lengthy discourse, the Examiner completely avoids the real issue. That issue, simply stated, is—what motor carrier competition would exist for the giant truck line proposed to be created in this proceeding, the

largest in the United States, with lines extending over 24,338 highway miles from Boston, Massachusetts, to New Orleans, Louisiana? For such an operation the obvious answer on or off this record is, none. The lines to be merged will, if this merger is approved, secure an absolute and unshakable hold on long-haul motor carrier traffic throughout this area. In his anxiety to justify the proposed merger, the Examiner resorts to a mass of irrelevant detail about motor truck operations in the territory of the individual carriers concerned as related to the existing operations of such individual carriers, but, as stated, avoids all mention of motor carrier competition to those lines merged into one gigantic carrier. Some would say that his exposition of competition for local or regional business is but a smoke screen thrown up to becloud and obscure the real issue. This portion of the proposed report, together with the Examiner's characterization of this merger as a "natural development" and "an end-to-end consolidation of complementary operations," and his attempt to minimize the strong competition presently existing between motor carriers parties to this merger, will also receive detailed consideration herein.

One may search the proposed report in vain for any expression of concern for the maintenance of competition in the motor carrier field. On the contrary, the Examiner's views, if adopted, can only tend towards large interterritorial motor truck operations, resulting in a cartelization of the motor carrier industry.

It seems timely therefore to pose the question, to what extent should private corporations be given the exclusive right to use public highways for commercial purposes? As a general premise it can be stated that the public highways belong to all the people, are for the use of all the people, and should be so kept and maintained forever in the public interest. However, their use for commercial purposes by carriers for hire has been repeatedly held by the courts to be a special use which has justified the states in the exercise of their police powers in excluding many such carriers from the highways. We are, however, here concerned not with police powers but with commerce. Shall commerce moving over our public highways by carriers for hire be turned over to a few huge corporations or shall the public which owns the highways enjoy the benefits of competition between such carriers? Stated otherwise, shall there be a "free market" for transportation services or shall there be regulated monopoly? That question is for the first time squarely before the Commission in this case. It can serve no purpose here to contend, as the Examiner impliedly does, that because prior to the Commission's jurisdiction in such matters certain corporations have virtually

usurped public carriage over our public highways in many sections of the country, the Commission should place its stamp of approval on further and even greater usurpation of our public highways. Congress can be relied upon to deal with conditions over which the Commission's jurisdiction does not extend, for it cannot be seriously contended that any of these corporations have a "vested right" to operate for private gain over our public highways. The Commission's concern is, of course, only with those transactions over which it has jurisdiction. In this proceeding that jurisdiction is herein for the first time invoked to concentrate certificated operating rights over 24,338 miles of our public highways in one huge corporation for private gain. That corporation will have such a dominance as will soon result in a monopoly of long-haul motor truck transportation throughout the territory involved.

Thus there is directly before the Commission, the question whether and to what extent it should permit such vast and exclusive use of our public highways for private gain.

624 This preliminary statement would be incomplete without reference to the Examiner's naive consideration of the interest of Kuhn, Loeb & Company, investment bankers, in this transaction and his off-hand disposition of the suggestion that competitive bidding be required for securities to be sold to the public. On the latter point he expresses "grave doubt whether marketing of the securities through competitive bids would be feasible." This view, as will be shown, is directly contrary to the testimony of the president of applicant in response to a query by the Examiner, though that testimony was subsequently slightly modified under the guiding hand of applicant's counsel. On the first point the Examiner fails to deal with realities. He states: "ownership by banking houses of minority interests in carriers of itself has not been demonstrated to be inconsistent with the public interest." But, as we shall see, he admits that if this merger is approved the way is clear to make such minority interest a majority interest, and the Commission will be powerless to do anything about it.

The greatest fear of the independent motor carriers today is the railroad invasion of the trucking field. That fear impelled numerous motor carriers to request this Division to intervene in pending applications of railroads for motor-carrier operating rights. The Division has intervened in two such proceedings.

625 That the concern of independent motor carriers is justified seems clear from the Division's experience thus far, for the railroads involved in these cases seek the virtual unrestricted right to operate over-the-road motor truck operations in competition with independent motor lines. In this situation, and

if it is permitted to further develop as these railroads propose, there are few independent motor truck owners today who would not sell their lines at the first reasonable opportunity while there is anything left to sell. For the motor carriers involved in this proposed merger, the setting up of this huge corporation would afford to them their opportunity. The owners of the Arrow Carrier Corporation have already sold out "lock, stock, and barrel" to Kuhn, Loeb & Company, banker for two of the largest railroads which operate in the affected territory. But Kuhn, Loeb & Company cannot under the Interstate Commerce Act purchase control of any other motor carrier without Commission approval. Their first effort to control these carriers was frustrated by Commission denial. However, if the other seven motor carriers should be merged into one company, as herein proposed, Kuhn, Loeb & Company can proceed to acquire all or part of the stock of that company without Commission interference. This eventuality is recognized by the Examiner in the following statement in his report: "It is obvious that imposition of a condition such as requested (divestment of investment banking house interest in or management of motor carriers as recommended by the Antitrust Division) would not accomplish the desired result, as the Commission could not prevent future acquisitions of stock by 626 the same interests, unless control or management in a common interest of two or more motor carriers was thereby effected." Here is the clear admission that upon approval of this transaction the Commission's jurisdiction in this vital matter ceases. There is, however, yet time to act. The Commission can prevent Kuhn, Loeb & Company from acquiring control of the other seven motor carriers by not creating the opportunity to do so through approval of the merger of these eight motor carriers into one company. Such action would stop at the threshold the exploitation of the motor carrier field as the railroads have been exploited.

In an effort to differentiate the old from the new deal, the Examiner writes feelingly about the "continued participation" by the present owners of the seven companies through their "proprietary interest" in the one company, Associated Transport, Inc. He does not accompany these expressions with any suggestion for public assurance of such continued interest. If anything, the contrary is true. A suggestion that these owners freeze their "proprietary interests" for a period of, say, five years to prevent investment banking house control or sale through investment banking houses of such "proprietary interests" in the form of stocks or bonds to the public, would insure to the public the "continued participation" that the Examiner apparently takes for granted.

The emergency should not be used as an excuse for fastening upon the public, whose attention is now focused upon the international scene, unsound policies and practices in transportation, no matter in what guise they may be presented, which result in undue restraint and monopolies. When this crisis is over, we will have struggled in vain if we find that in our own country aspiring groups and individuals have, under the plea of "efficiency," destroyed the opportunity for the "small man" in business to survive and that all fields of endeavor, including the use of our public highways for commercial purposes, have been concentrated in the hands of a few. The proposed merger is not a "natural development" in the motor carrier field nor is its approval necessary to national defense. It is a promotional scheme, unsound in its inception and equally so as revised. And the strangest aspect of this case is the complete absence of railroad opposition—especially in the light of the attempted railroad invasion of the motor carrier field. In this connection it is not inappropriate to direct attention to the railroad bankers who sponsor it.

The basis and purpose of the Division's intervention in this proceeding was set forth in its initial petition to the Commission.<sup>1</sup> In other proceedings the Commission has indicated that it is without authority to require compliance with the antitrust laws. By statute, however, it has the power to relieve parties from the operation of such laws in an appropriate order in this and similar proceedings. It is evident, then, that only through cooperation between these two agencies of government can the public interest be protected and the will of Congress given full force and effect. This is the spirit in which this Division has participated in this proceeding and in which it submits herewith its exceptions to the Examiner's proposed report and brief in support thereof.

#### THE EXCEPTIONS

The Antitrust Division excepts to the findings of fact, conclusions of law, and to the proposed report of the Examiner, served November 28, 1941, in the following particulars, to wit:

1. The Examiner erred in recommending that the Commission should find, contrary to law and the evidence, as follows:

"That acquisition by Associated Transport, Inc., of control of Arrow Carrier Corporation, Barnwell Brothers, Incorporated, Consolidated Motor Lines, Incorporated, Horton Motor Lines, Incorporated, McCarthy Freight System, Inc., M. Moran Transpor-

<sup>1</sup> See Appendix 1 hereto.

tation Lines, Inc., Southeastern Motor Lines, Incorporated, and Transportation, Incorporated, through purchase of their capital stock, and subsequent consolidation into Associated Transport, Inc., of the operating rights and properties of the carriers named, for ownership, management, and operation, upon the modified terms and conditions above set forth, which terms and conditions as so modified are found to be just and reasonable, will be consistent with the public interest, and that the transactions proposed are within the scope of section 5 (2) (a) (sheets 53-54)."

and in failing to recommend that the Commission find, as  
629 required by law and the evidence, that the proposed acquisition and merger will not be consistent with the public interest in that its authorization and consummation would (a) unduly restrain competition in the motor carrier industry and (b) the direct financial interest which investment banking houses would acquire in applicant, one of which, Kuhn, Loeb & Company, is and has for many years been engaged in railroad financing and promotions, will tend toward a restoration of monopoly in transportation and will otherwise be contradictory and hostile to the public interest.

2. The Examiner erred in recommending that the Commission should find, contrary to law and the evidence, as follows:

"1. That, if the proposed transactions were consummated, there would remain adequate motor-carrier competition between the points in the territory involved with respect to which there would be any elimination of competitive service as a result of such transactions.

"2. That, between the principal points involved, substantial competition would be afforded the unified operation by rail carriers.

"3. That the proposed transactions would not result in an undue restraint of competition (sheet 40)."

3. The Examiner erred in recommending that the Commission should find, contrary to law and the evidence, as follows:

630 "1: That the proposed transactions would result in improved transportation service, in that through movements of freight would be simplified and expedited, terminal facilities would be improved, the handling of shipments reduced, relations with shippers and public regulatory bodies would be simplified, and safe operation promoted.

"2. That such transactions would result in more efficient and greater utilization of equipment, and provide a transportation system better fitted to meet the increased demand for transportation service than the carriers involved if operated independently

"3. That such transactions would result in substantial operating economies.

"A. Assumption by applicant of the fixed charges of the carriers involved would not be contrary to the public interest (sheet 15)."

4. The Examiner erred in finding, contrary to law and the evidence, as follows:

"The foregoing clearly shows that if the proposed transactions were approved and consummated, there would be ample competitive motor-carrier service throughout the territory involved. In addition, all of the principal points and many others are served by one or more rail carriers. Competition is also afforded by motor-vehicle contract carriers, and by earloading and forwarding companies (sheet 36)."

5. The Examiner erred in finding, contrary to the evidence, as follows:

The proposed unification would encourage long-haul traffic only to the extent that, through the unification, applicant might be able to offer a better service, or service at lower rates, than the independent carriers can now offer (sheet 50)."

6. The Examiner erred in finding, contrary to the evidence, as follows:

"Many motor carriers presently render single-line service between the Southern, Middle Atlantic, and New England regions, and such service is also rendered through interchange by combinations of motor carriers (sheet 49)."

7. The Examiner erred in recommending that the Commission deny the motion of the Antitrust Division that motor vehicle common carriers of property interchanging freight in the metropolitan area of New York, Baltimore and Philadelphia, including those lines involved in the proposed merger and those left out, be required to furnish the Commission information on the tonnage received from and delivered to connecting carriers in New England and New York State for the last six months of 1940 (sheet 40).

8. The Examiner erred in finding, contrary to the evidence, as follows:

"The fewer number of carriers involved in the instant proposal makes the question of possible restraint of competition makes the carriers involved in the prior case, but not in the present one, alone would furnish substantial competition to applicant throughout much of the territory involved (sheet 52)."

9. The Examiner erred in finding, contrary to the evidence, as follows:

"The proposed unification is predominantly an end-to-end consolidation of complementary operations, but having sufficient overlapping to make possible eliminations of duplications necessary in order to provide economies and to release for other business equipment and terminal space presently so vital. The unified operation would offer the public a more complete service in a large area along the eastern seaboard. (sheet 52-53)."

10. The Examiner erred in finding, contrary to law and the evidence, as follows:

"There are many thousands of motor carriers of property subject to the Commission's jurisdiction. Many of these are very small, and, no doubt, small motor carriers will continue to have their place in the industry. On the other hand, it would seem that large motor-carrier systems, comparable in size and strength with units of competing forms of transportation, should also have their place in the industry. Recent legislation shows a Congressional intent to encourage railroad unifications. In view of the  
633 national transportation policy, as declared in the act, it can not be supposed that Congress intended that the motor-carrier industry, a coordinate and competing form of transportation, should be discriminated against in such respect. On the contrary, considering the much greater number of motor carriers of property and their relative size as compared with railroads generally, the need of unifications in the trucking field is more apparent than in the case of railroads, which have already had many years of development (sheet 39)."

11. The Examiner erred in concluding, contrary to law, as follows:

"Section 5 was designed to permit unifications which might result in restraining competition within the meaning of the anti-trust laws, where the disadvantages of such restraint were offset or overcome by other advantages to the public, such as direct betterment in the public service of the carriers or indirect betterment through stabilization of the industry. Thus, determination of the larger question as to whether the proposed unification would be consistent with the public interest involves consideration not only of the competition that would be eliminated, but also of the competition that would remain, and advantages which would otherwise result from the unification (sheet 24)."

12. The Examiner erred in finding, contrary to the evidence, as follows:

634 "Contrary to the argument of protestant, it is clear that Kuhn, Loeb and Company did not sponsor the proposal now under consideration (sheet 51)."

13. The Examiner erred in finding, contrary to the evidence, as follows:

"Ownership by banking houses of minority interests in carriers of itself has not been demonstrated to be inconsistent with the public interest (sheet 51)."

14. The Examiner erred in finding, contrary to the evidence, as follows:

"In the Transport Co. case, large promotional and organizational fees were to be paid; here no fees are to be paid to promoters or organizers (sheet 52)."

15. The Examiner erred in finding, contrary to the evidence, as follows:

"The principal officers of the respective companies would remain with the organization, and local management in the various divisions of the system would be left largely in their hands. Their continued participation and efforts to advance applicant's welfare are assured by their proprietary interest (sheet 53)."

15. The Examiner erred in finding, contrary to the evidence, as follows:

635 "Sale of stock to the public by these carriers individually for raising additional capital is not feasible, and extensive use of credit for expansion of facilities would place them in such a precarious financial position that their solvency would be jeopardized in the event of a recession in business (sheet 53)."

17. The Examiner erred in finding, contrary to the evidence, as follows:

"Considering the type of securities involved, the newness of the enterprise, and the unfamiliarity generally of the public with motor-carrier securities, there is grave doubt whether marketing of the securities through competitive bids would be feasible (sheet 45)."

18. The Examiner erred in recommending that the Commission find, contrary to law and the evidence, as follows:

"That consolidation of such carriers into applicant can best be accomplished if applicant is permitted first to acquire control of them through stock ownership.

"That any authority herein granted for applicant to acquire control of such carriers should be conditioned upon applicant's filing with the Commission prior to the exercise of such authority, a written acceptance of the following condition, viz: Applicant shall consolidate, or cause to be consolidated, pursuant to 636 the authority herein granted, all the operating rights and properties of the carriers involved into itself for ownership, management, and operation within one year from the date that applicant acquires control of any of such carriers (sheet 28)."

19. The Examiner erred in finding, contrary to law and the evidence, as follows:

"Approval of the instant transactions would not entail any finding by the Commission that the common stock proposed to be issued has a greater value than par, and, if subsequently the public wished to buy such stock at a greater price, any such purchase would be at its own risk and not in reliance upon anything this Commission had found or said. Obviously, the Commission cannot control all future selling prices of stock, issuance of which it authorizes, and contrary to the League's expressed fears, would not, and could not, under the law, base rates on stock quotations (sheet 45)."

20. The Examiner erred in recommending that the Commission find, contrary to law and the evidence, as follows:

"1. That acquisition of control of the carriers involved in No. MC-F-1612 and affiliated noncarrier companies would require issuance by applicant of 648,643 shares of its common stock and 39,049 shares of its preferred stock, having an aggregate par value of \$4,553,543.

637 "2. That the aggregate net worth of the corporations of which control would be acquired is approximately \$4,900,000.

"3. That, if the proposed acquisitions of control were consummated, an addition to applicant's capital of \$1,500,000 for working capital and other corporate purposes would place it and the carriers involved upon a sounder financial basis, and is reasonably necessary for that purpose.

"4. That upon consummation of the proposed transactions applicant would have adequate capitalizable assets to support the securities proposed to be issued (sheet 47)."

21. The Examiner erred in recommending that the Commission find, contrary to law and the evidence, as follows:

"That issuance by Associated Transport, Inc., of not exceeding 54,049 shares of preferred stock and 860,411 shares of common stock, for the purposes and upon the modified terms and conditions above set forth, (a) is for a lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for and consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose (sheet 54)."

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#### CONCLUSION

For the reasons stated in support of the Exceptions to the findings of fact, conclusions of law, and to the proposed report of

the Examiner, the Antitrust Division recommends that such findings, conclusions, and report be rejected by the Commission and that the applications be denied.

Oral argument is requested.

Respectfully submitted.

(signed) THURMAN ARNOLD,  
*Assistant Attorney General,*

(signed) ARNE C. WIPRUD,

(signed) FRANK COLEMAN,

(signed) S. R. BRITTINGHAM, Jr.,

*Special Assistants to the Attorney General,*

(signed) DAVID G. MACDONALD,

*Special Attorney,*

*Counsel for the Antitrust Division,*

*Department of Justice.*

WASHINGTON, D. C., December 17, 1941.

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#### CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each party.

Dated at Washington, D. C., this 17th day of December 1941.

(Signed) ARNE C. WIPRUD.

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Before the Interstate Commerce Commission

Docket Nos. MC-F-1612, MC-F-1613

IN RE ASSOCIATED TRANSPORT, INC., CONTROL AND CONSOLIDATION,  
ARROW CARRIER CORPORATION, ET AL.

ASSOCIATED TRANSPORT, INC., ISSUANCE OF SECURITIES

*Exceptions on behalf of the National Industrial Traffic League to  
proposed report of Examiner Vernon V. Baker*

Filed December 18, 1941

Now comes The National Industrial Traffic League and presents the following exceptions to the report proposed by Examiner Vernon V. Baker, Section of Finance, Bureau of Motor Carriers, served November 28, 1941, in these proceedings:

1. The League questions the soundness and sufficiency of the findings recommended on Sheet 47, particularly as to their adequacy to afford a full and mature explanation of all those features of the financial structure which may affect the public, and as to their adequacy to afford support to the second conclusion on sheet 54 that the issuance of securities be approved and authorized.

2. The League urges that the Examiner has not set forth correctly the contention and position of the League (sheet 44); it further raises the question whether the Examiner correctly recognizes the duty and policy of the Commission as regards advertised and future market price of carrier securities having a nominal par value.

3. The Examiner correctly takes the view, in the chapter entitled Issuance of Securities and in the concluding chapter on sheet 50, that questions of rate-making policy are not to be considered in cases under Section 5 but should be reserved for determination when they arise in subsequent rate cases. For that very reason, however, the greatest care should here be exercised to insure that nothing shall be permitted to be done by way of consolidation or the issuance of securities at this time which could possibly prejudice or embarrass the future administration of the Act in rate cases. The Examiner's report is at best unconvincing to the League, which desires only a thorough scrutiny and complete reassurance.

#### ARGUMENT

The purpose for which The National Industrial Traffic League is participating in this proceeding, by the filing of brief and of exceptions to the proposed report, is not the defeat of this application; rather, the entire purpose is the protection of those principles stated in the League's brief, as recognized in the declaration of policy and various other provisions of the

Act. The League's purpose will be accomplished even though the application be granted, if the report and order which the Commission enters herein is so drawn and so conditioned as to insure that there shall be fully and completely reserved for future appropriate proceedings all questions of rates and rate policies which may arise as a result of the contemplated consolidation. This means, however, not merely a verbal recognition such as is accorded by the Examiner, but a real scrutiny and understanding of the implications of the proposed transactions, together with a full disclosure of the underlying purposes of the parties, and effective guarantees to the public.

## THE STATUTE

Section 5 of the statute provides in substance that consolidations or mergers of carriers may be authorized and approved by the Commission, after appropriate proceedings, and upon such terms and conditions as the Commission may find to be just and reasonable; if it concludes that such consolidation "will be consistent with the public interest."

We think that this contemplates the formation of a new operating carrier in which will be merged former separately-owned carriers, only when such entire transaction is in harmony with the national transportation policy and the broad substantive provisions of the Interstate Commerce Act and the Motor Carrier Act.

Under Section 214, as amended, common carriers by motor vehicle are subject, as regards the issuance of securities, to the provisions of paragraphs (2) to (11), inclusive, of Section 20a of Part I. In other words, the law which the Commission has so long and wisely administered as to issuance of securities of railroads applies alike to motor carriers. Specifically, paragraph (2) of Section 20a contemplates that the Commission shall authorize issuance of securities only if it finds that such issue

"(a) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose."

We believe the Commission has administered Section 20a as applied to railroads in such way as to guard against over-capitalizations and improper financing, and that the Commission may readily determine whether the financing contemplated in the present application is essentially sound, as the Examiner believes it to be. It should be observed, however, that the security issues here proposed are, by reason of the Commission's jurisdiction, completely exempt from the regulatory powers of the Securities Exchange Commission, and applicant is relieved of the duty to file registration statements with that body. In general, the provisions of and regulations under the Securities Act and Securities Exchange Act are designed to compel a full disclosure and complete information for the protection of the buying public. Specifically, we suggest that this Commission, under the circumstances, should accept no less complete information and should make no less thorough an examination of the transaction than is uniformly required of non-carrier financing.

The application in Docket MC-F-1612 seeks authority under Section 5 for the newly formed applicant Delaware corporation to acquire control of eight operating motor carriers, which are listed on sheet 2 of the proposed report and which, as shown on page 2 of the opening brief for the League, operate in the aggregate approximately 3,000 vehicles.

The application in Docket MC-F-1613 is described in the proposed report as seeking "authority under section 214 of the act to issue 54,049 shares of preferred and 880,311 shares of common stock, having par value of \$100 and \$1 per share, respectively." This agrees with our description of the application on the first page of the brief for the League, but we there failed to recite and overlooked the fact that part of this common stock was intended to be issued—as the Examiner's report correctly states—"for conversion from time to time of the preferred stock."

This inaccuracy stems from overlooking a feature of the application which is not mentioned even in the brief filed by counsel for applicants. That brief is singularly wanting in any discussion or explanation of the terms and provisions of the financial structure of the new corporation and there is no discussion whatever of the facts upon which must be considered the propriety of the issuance of the securities under the terms of Sections 214 and 20a.

All that needs to be said about this conversion of preferred to common stock is the bald fact that, of the 880,311 shares of common stock contemplated by the amended application, some 200,000 shares are not to be issued until preferred stock is tendered for conversion on the ratio of 4 shares of common for 1 of preferred during an initial 3-year period, and  $3\frac{1}{2}$  shares or 3 shares for 1 in similar subsequent periods. The preferred stock is \$100 par, and the conversion ratio suggests an assumed value for the common of \$25 or more per share. We overlooked in our opening brief this feature of contingent future issuance of 200,000 shares of common; but this is not strange in view of the haziness of the record and of the fact that applicant's counsel failed to mention it in their brief, where they described the application as follows:

"By a second application heard and to be considered simultaneously, authority is sought to issue common stock of one dollar par value and six per cent accumulative preferred stock of one hundred dollars par value, for exchange with the present stockholders for the stock of the aforesaid eight operating companies and for the stock of four noncarrier companies so intimately asso-

ciated with the carriers as to make their acquisition necessary or desirable. Beyond this common and preferred stock issue, authority is sought for issuance of additional shares of preferred stock of the same class, which stock is to be sold to the general public in order to stabilize and improve the credit and general financial position of the merged companies and to provide working funds."

We respectfully suggest that the Commission require counsel for applicants to confirm and accept as correct the figures set forth in the proposed report of the Examiner, if the Commission is to approve the proposed securities as the Examiner recommends.

Considering further, we find that this set-up, described on sheets 41 and 42 of the proposed report, contemplates the issuance of preferred and common stock principally in payment for the stock of the underlying companies with future issuance of 701 additional preferred shares to provide further capital and enlarged facilities, and of additional common to permit of conversion of the preferred stock if desired by the holders.

When the transactions are completed, including the sale of stock for raising working capital, the applicant will apparently have outstanding either some 54,000 shares of preferred and some 640,000 shares of common or, if the preferred is converted, it will have outstanding approximately 860,000 shares of common, par value \$1.00 (Sheet 42).

The League does not urge that there is anything wrong with such a proposal on its face, or necessarily wrong on final analysis. But it must be admitted that such a program reasonably gives rise to many questions and doubts in the mind of an affected third party.

For example, it is not clearly explained why the promoters have chosen this method of financing, using \$100 preferred and \$1 par common, with a conversion ratio of four to one, which seems to assume a value of \$25 per share in the common stock. The League has no information to offer which would be helpful in determining whether such financing is or is not sound and is or is not consistent with the public interest; but the League does suggest these matters should be explained. Taking the foregoing example, the apparent assumption of a \$25 value in the common stock does not square with other estimates by applicant's witnesses, or with the net worth of the carrier properties. What effect can this combination of circumstances, together with the use of nominal par value stock, have to embarrass a possible future rate case wherein the question of the owner's investment might be of great moment?

702 The Delaware corporation laws determine the significance and effect of a stated par value of \$1.00 per share. This is important because of its bearing on the possibilities inherent in exchanging of \$1 par common for \$100 par preferred, on a four-for-one ratio. Under the general body of corporation law there are many questions with regard to common stock of no par value; and under some statutes and decisions \$1 per share stock may be considered as having some of the flexible features of no par stock.

We question whether the specific findings suggested on sheets 47 and 48 are sound and sufficient under Section 20a to support the final conclusion recommended in paragraph 2 on sheet 54 that the proposed issuance of securities should be authorized. Surely those findings are not clear and searching, but are somewhat superficial and place great faith in mute figures.

On sheet 44 of the proposed report, the Examiner states, with some admitted uncertainty, the contention advanced by the League in its opening brief. He concludes that upon analysis the unsoundness of the League's contention is readily apparent. What we desired to say for the League is reflected in three paragraphs on pages 9 and 10 of the brief, as follows:

"We are unable to find in the reported decisions of the Commission with regard to the issuance of securities and the financing of railroads or motor carriers any recognition of the propriety of capitalizing against anticipated future earnings. Such practice would be most unhealthy and it would be no real offsetting argument to urge that only by thus contemplating future increments could the owners of separately operated properties be induced to enter into consolidations.

"If the properties entering into the consolidation here proposed should not prove sufficiently profitable to enable satisfactory dividends on the proposed capital stock, based on the values paid by the holding public, the result inevitably will be  
703 to discourage investments in the securities of other motor carriers, to discourage future consolidations, and thus adversely affect the public interest.

"On the other hand, shippers may fairly insist that in no manner shall the Commission now become committed to deal in the future with the transportation rates of these motor carriers with any degree of regard to the earnings to be realized on their capital stocks, as distinguished from the return on their investments in transportation facilities."

The Examiner does not see in the proposed transaction any basis for fear that in some way in the future the capitalization of the applicant will become inflated, and he says on sheet 45:

"Approval of the instant transactions would not entail any finding by the Commission that the common stock proposed to be issued has a greater value than par, and, if subsequently the public wished to buy such stock at a greater price, any such purchase would be at its own risk and not in reliance upon anything this Commission has found or said. Obviously, the Commission cannot control all future selling prices of stock, issuance of which it authorizes, and, contrary to the League's expressed fears, would not, and could not, under the law, base rates on stock quotations."

The League's position, stated differently, is that there must be no future inflation of the applicant's capital structure for rate making purposes, based on supposed earning power as distinguished from values of physical assets. This in accordance with the requirements of Section 216:

"(h) In any proceeding to determine the justness or reasonableness of any rate, fare, or charge of any such carrier, there shall not be taken into consideration or allowed as evidence or elements of value of the property of such carrier, either good will, earning power, or the certificate under which such carrier is operating; and in applying for and receiving a certificate under this part any such carrier shall be deemed to have agreed to the provisions of this paragraph, on its own behalf and on behalf of all transferees of such certificate."

This feature may be disposed of with an assurance by the Commission that in the future consideration of the relation of the rates and earnings of the applicant to its capital structure or value for rate-making purposes, nothing said or granted in the determination of the pending application should prejudice the Commission's actions or views. Accordingly, when counsel for applicants have confirmed the facts as stated above, we further suggest that the Commission require a statement as to what the applicant will conceive to be its capital investment, together with an opinion of applicant's counsel that this investment cannot, under the Delaware law, be affected by future transactions in converting preferred stock into common.

#### TERRITORIAL EXTENT OF THIS CONSOLIDATION.

The second broad feature presented in the opening brief for the League relates to the policy which the Commission should or may adopt under Section 5 as to consolidations of motor carriers.

This, the Examiner discusses on sheets 49-50 of the proposed report. We quote the two separate sentences which open the first and second paragraphs on sheet 49:

"The League refers to the plan adopted by the Commission on December 9, 1929, 159 I. C. C. 522, for the consolidation of rail-

roads, and asserts that the consolidation here proposed does not conform to the pattern specified therein, particularly with respect to size and territorial and geographical extent."

"The League also contends that the advantages inherent in highway transportation have to do largely with short-hauls and, inferentially at least, that approval of the proposed consolidation would foster uneconomical long-haul transportation."

Having raised this point, counsel for the League now agrees that the Examiner is quite correct in saying that in prior cases under Section 5 the Commission has not undertaken to limit the extent of a carrier's operations but has reserved rate questions and has imposed no restrictions of the business which the applicant could handle. Such questions of the benefits and advantages of long-haul vs. short-haul transportation by rail and by motor truck should be treated when they arise in the course of the Commission's exercise of its rate regulatory authority. All the League asks is that the report herein shall not serve as a precedent or impediment to unreserved consideration of the merits of future "rate matters" involving the applicant, assuming that these applications are approved.

706 Oral argument is requested in view of the importance of these proceedings and of the nature of the questions involved.

Respectfully submitted.

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE.

By JOHN S. BURCHMORE, *Attorney.*

L. F. ORR, *Chairman, Highway Transportation Committee.*

R. R. LUDDECKE, *President.*

JOHN B. KEELER, *Chairman, Executive Committee.*

EDWARD F. LACEY, *Executive Secretary.*

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE.

450 Munsey Building, Washington, D. C.

WALTER, BURCHMORE & BELNAP.

2106 Field Building, Chicago, Illinois.

December 17, 1941.

#### CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each party of record.

Dated at Washington, D. C., this 17th day of December, 1941.

(Signed) JOHN S. BURCHMORE, *Counsel.*

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Exceptions of the National Grange to the proposed report by the  
Examiner and brief in support of exceptions*

Filed December 18, 1941

## STATEMENT

The National Grange intervened in these cases subsequent to the hearing for the purpose of taking evidence. It should not be understood, however, that delay in initial action indicates lack of interest on the part of the Grange in these proceedings. The Grange intervened in these cases because it is convinced that the precedent of monopolistic control of transportation which the consummation of the proposed merger would sanction would adversely affect the interests of agriculture and would be prejudicial to the best interests of the people as a whole.

## EXCEPTION

The Examiner erred in recommending the consummation of the proposed merger and the issuance of securities in connection therewith.

## ARGUMENT

In the opinion of the National Grange, the record in these cases clearly shows that the consummation of the proposed merger would result in not only a monopoly in rail transportation in the east, but because of the participation of the banking house of Kuhn, Loeb and Co., investment and railroad bankers, the proposed merger would result in a practical monopoly of all eastern transportation.

It is believed that such a merger would establish a precedent toward monopolistic control of the facilities of transportation and would result in a request for permission to establish similar

mergers with like results in other parts of the country. The adverse effects to agriculture of a monopoly in transportation in this country are perfectly-obvious.

The Grange was a pioneer in the movement for good roads, and one of the principal reasons for sponsoring the improvement of our highways was the desire on the part of the Grange to free American agriculture from the monopolistic control of transportation enjoyed in the past by the rail carriers.

More than 60 years ago the Grange led the fight against the excesses of the railroads. The so-called "Granger" railroad cases, which originated in Illinois, Iowa, Wisconsin, and Minnesota, were decided by the Supreme Court of the United States in 1876. The decision of the court in these cases established the principle that all who make the public any way dependent upon them for services rendered may be restrained by law from abusing the quasi-monopoly position which they occupy. The successful conclusion of these cases led up to the establishment of the Interstate Commerce Commission and the regulation of the railroads.

However, it was not until the advent of motor transportation and the development of our modern system of highways, together with the improvement of our inland waterways, that the monopoly formerly enjoyed by the railroads was broken and that effective competition in transportation was established.

While it is true that, under the Motor Carriers Act of 1935, Congress provided for Federal regulation of common and contract motor carriers in interstate commerce, it could not be successfully maintained that Congress in passing this act envisaged the creation of a monopoly in the field of motor transportation.

The highways of the country have been constructed at public expense, and the right of the public to use these highways under proper conditions must not be denied nor abridged.

What the Examiner in his proposed report euphoniously calls a "unification" of the carriers involved in these cases means the same thing as the establishment of a vast monopoly in the field of motor transportation. To this we object.

The eight motor carriers which it is proposed to merge in these cases at present operate over 37,884 miles of highway in 19 states, extending along the Atlantic seaboard from the states of New York and Massachusetts in the North to Florida and Louisiana in the South. The consummation of this merger would create the largest common carrier of property by motor vehicle in the United States.

Transportation is the highest single service charge that agriculture has to pay. We believe that the merger of the eight

carriers involved in these cases could not fail to result in higher transportation rates. In our opinion, the proposed merger would be contrary to the will of Congress and detrimental to the interests of agriculture and to all the people.

## CONCLUSION

For the reasons stated, the National Grange recommends that the findings, conclusions, and report of the Examiner be rejected and that the applications be denied.

Oral argument is requested.

Respectfully submitted.

THE NATIONAL GRANGE,

1343 H-Street NW., Washington, D. C.

FRED BRECKMAN,

*Washington Representative.*

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## CERTIFICATE OF SERVICE

I hereby certify that I, this day, served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each such party.

Dated at Washington, D. C., this 18th day of December 1941.

FRED BRECKMAN,

Fred Breckman,

*Washington Representative,*

*The National Grange.*

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Before the Interstate Commerce Commission

Docket MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL.

Docket MC-F-1613.

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Exceptions on behalf of the Secretary of Agriculture to Report  
Proposed by Examiner Vernon V. Baker*

Filed December 18, 1941

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## STATEMENT

The Secretary of Agriculture did not intervene in these proceedings until after the hearing for the purpose of taking evidence was completed. Delay in initial action, however, does not

signify lack of interest on the part of the Secretary in the ultimate result to these cases. The Secretary intervened as soon as he was apprised of the implications, actual and potential, of applicant's proposed action. He is convinced that the consummation of applicant's proposal would have effects seriously adverse to the interest of American agriculture.

The proposed report of the examiner in these cases, it is submitted, is, in many particulars, contrary to the evidence and the applicable law. Moreover, the ultimate result reached in the examiner's report is, in the opinion of the Secretary, derogatory of all sound principles of transportation regulation. With respect to particular defects in the examiner's proposed report, the Secretary wishes to concur in the exceptions and argument in support

thereof of the Antitrust Division of the Department of Justice filed with the Commission on December 17, 1941. In

714 order to avoid repetitious argument, the Secretary respectfully requests that the Commission consider the Secretary as supporting and endorsing these detailed exceptions and arguments. With respect to the fundamental result proposed by the examiner, the Secretary likewise wishes to concur in the position taken by the Antitrust Division and with the argument in support of that position. As a matter of emphasis, however, certain circumstances concerning the proposed recommendation of the examiner which bear particularly upon agricultural interests will be briefly developed.

#### EXCEPTION

The examiner erred in recommending the consummation of applicant's proposed merger.

#### ARGUMENT IN SUPPORT OF EXCEPTION

Two propositions will be advanced. First, it is submitted that the consummation of the proposed merger will result in a practical monopoly in motor transportation throughout the area involved. Secondly, there exists a strong probability that the consummation of the proposed merger will result in a cartelization of rail and motor transportation in the affected area. These

715 two propositions, it is submitted, are amply supported by the record. In this connection, reference is made to the original brief and to the exceptions of the Antitrust Division. The first proposition is so nearly self evident from an examination of the record and has been so ably demonstrated by the brief and exceptions, referred to above, that further argument would seem unnecessary. With respect to the second proposition, i. e., that the consummation of the proposed merger will probably result in

the cartelization of eastern rail and motor transportation, a brief amplification of the existing discussion on this point may be helpful.

The examiner refers in his proposed report to the small percentage of ownership which Kuhn, Loeb & Company has in the assets of the contemplated merger. In the exceptions of the Anti-trust Division, it is pointed out that following the consummation of the proposed merger there will be nothing to prevent this company from securing a preponderance of these assets. Regardless, however, of whether Kuhn, Loeb & Company ever secures ownership of a majority of the assets of the proposed merger, it is an exceedingly superficial viewpoint which would deny the probability that this company will have effective control over its operations.

716 . In the now classic study by Berle and Means, the Modern Corporation and Private Property, the divorcement of ownership and control in modern business organizations is conclusively demonstrated. Control no longer depends upon ownership of capital assets. The all-important elements underlying control of most large concerns are the intangible factors of organization, managerial competence, financial interrelationships in the general business structure, and those amorphous but vitally important factors growing out of strategic personal and business interrelationships. The existence of these factors are economic realities which cannot be ignored in any intelligent appraisal of actualities, and, it is submitted, it does not require great acuteness to discover wherein, among the component parts of the proposed merger, the preponderance of these factors lie. The very fact that there was no railroad opposition to the proposed merger lends support to the belief that, either through later acquisition of capital assets or through some one of the many mechanisms of minority control, the railroad banking house of Kuhn Loeb & Company will control the operations of the proposed merger. To deny that such control would destroy competition in eastern transportation is to forget the plainest lessons of transportation history and to ignore the realities of financial methods.

717 The interest of American agriculture in preventing monopolistic conditions in transportation are obvious. The Interstate Commerce Commission owes its existence, in large measure, to the agrarian revolt of the early seventies against intolerable abuses growing out of railroad monopoly. Through the functioning of the Commission, monopolistic practices were controlled, but it was only with the development of inland waterways and, more particularly, the modern highway systems that the railroad monopoly was broken. The development of free highways and the con-

comitant growth of the motor industry gave American agriculture the advantage of competing transportation facilities.

It is realized that the Congress has by affirmative legislative action modified pre-existing competition between transportation facilities. In the interests of stability, the Congress has given the Commission control over rates and business privilege rights of motor carriers. It must be emphasized, however, that the Congress has never sanctioned the concept of regulated monopoly in transportation. The philosophy underlying its enactments in this field has never gone beyond the point of advocating a condition of regulated competition. The Secretary earnestly submits that in the event the Commission approves applicant's proposed merger it will, by administrative action, be permitting the realization in fact of a monopoly condition in transportation beyond that authorized by the Congress.

#### CONCLUSION

For the reasons stated above and for those contained in the Exceptions of the Antitrust Division, the Secretary recommends that the findings, conclusions, and report of the Examiner be rejected and that the applications be denied.

Oral argument is requested.

Respectfully submitted.

By direction of the Secretary, December 18, 1941.

(Signed) **MASTIN G. WHITE**, *Solicitor,*  
*United States Department of Agriculture,*  
*Washington, D. C.*

**HASKELL DONOHO**,  
*Of Counsel.*

**CHARLES B. BOWLING**,  
*Chief, Transportation Division,*  
*Surplus Marketing Administration.*

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#### CERTIFICATE OF SERVICE

I hereby certify that I, this day, served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each such party.

Dated at Washington, D. C., this 18th day of December, 1941.

(Signed) **HASKELL DONOHO**,  
*Haskell Donoho, Senior Attorney,*  
*United States Department of Agriculture,*  
*Washington, D. C.*

## MC-F-1612

IN THE MATTER OF ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—ARROW CARRIER CORPORATION, ET AL.

## MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Exceptions and brief in support thereof*

Filed December 18, 1941

Comes now Andrew B. Crichton, et al., doing business as Super Service Motor Freight Co., protestant herein, by its attorneys, Roberts & McInnis, and respectfully presents the following exceptions to the proposed report by Examiner Vernon V. Baker, served November 28, 1941:

## I

Protestant excepts to the failure of the Examiner to find that the consideration for the acquisition by Associated Transport, Inc. of control of Southeastern Motor Lines, Inc., is excessive and not in the public interest for the reason, among others, that the restrictions upon the rights of said Southeastern Motor  
723 Lines, Inc., referred to although not specified by the Examiner at Sheet 33, and the nature of the rights to be acquired under the application from Barnwell Brothers, Inc. and Horton Motor Lines, Inc., are such as to make the acquisition of control of Southeastern Motor Lines, Inc. unnecessary in the accomplishment of the alleged purposes of the application and of no value.

## II

Protestant further excepts to the Examiner's assumption without discussion or rationalization that all the rights claimed by said Southeastern Motor Lines, Inc. exist in law and in fact as claimed. Specifically, the protestant excepts to the Examiner's error in not requiring the elimination of Southeastern from the proposed control and consolidation because of its failure to possess title to rights claimed between Nashville and Knoxville, Tennessee, and now operated unlawfully by said carrier.

## III

Protestant further excepts to the Examiner's failure to find as a matter of law that Southeastern Motor Lines, Inc., has no

rights to convey under its compliance order of November 29, 1938, for the reason that said order is based upon an irregular operation by Southeastern's predecessor which was unlawfully converted into a regular route operation contrary to the doctrine of the Maher case, 307 U. S. 148.

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## IV

Protestant excepts to the approval of the acquisition of control of Southeastern Motor Lines, Inc., by Associated Transport, Inc., through purchase of its capital stock, for the reason that such acquisition of joint control of competitive carriers without immediate consolidation provides opportunities for, and induces discrimination in service, rates, and interchange provision between the several carriers so controlled, and has been consistently condemned in finance reports of the Commission.

## V

Protestant excepts to the indefinite proposal of subsequent consolidation by Southeastern Motor Lines, Inc., and its operating rights and properties into and with Associated Transport, Inc., because no proposal for such consolidation, nor of the terms and conditions thereof, nor of the operations to be conducted, nor the expenses to be incurred by such consolidation, are before the Commission, and for the further reason that the present operation of Southeastern between Roanoke, Virginia, and New York City is, in fact, the regularly routed successor of an irregularly routed "grandfather" claim not yet finally adjudicated, and that it could not be consolidated with the regular operations which would be merged into Associated Transport.

725 Protestant further asserts that the Jacobs' rights under which Southeastern proposes to operate between Nashville and Knoxville, Tennessee, in interstate commerce are nonexistent in that the said Jacobs' operations, illegally commenced subsequent to "grandfather" date and abandoned for a protracted period of more than one year prior to commencement of operation, claimed only service between Nashville, Tennessee, and New York City without service of intermediate points, and there exist no rights to operate between Nashville and Knoxville in interchange as an extension of entirely dissimilar rights otherwise acquired.

Protestant further excepts to the proposal to transfer, as a consideration for the purchase price of the controlling interest in the stock, applications to conduct common carrier service on proof of convenience and necessity adversely determined in the Examiner's

report issued March 12, 1940, and finally submitted on reply to exceptions on May 1, 1940, and as yet undecided.

## VI

Protestant further excepts to the proposed report insofar as it affects the acquisition of the control of Southeastern for the reason that it is not in the public interest in that it is a proposed elimination of competition without being in any sense complementary to the consolidated operation of Associated Transport, Inc.

The protestant asserts as a matter of law that there is no present right in Southeastern to operate or to continue operations west of Knoxville, Tennessee, and that there are no rights in Southeastern north of Roanoke, Virginia, which are susceptible of merger or consolidation, and that the proposed acquisition of control is not consistent with the public interest, nor capable of fruition of merger consistent with the public interest and, hence, that it must be disapproved.

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### CONCLUSION

This protestant has zealously avoided discussion of the merits of the proposed report, other than as it affects inclusion of Southeastern in the merger. It is its position that the general problems involved in this proceeding are before the Commission at the instance of other and, we submit, competent authority. The approval of the inclusion of Southeastern in the proposal for common control and eventual merger is one of critical importance to Super Service. It may be noted that Super Service was included as the basic carrier having certificated rights in an earlier proposal involving certain of the same interests, which was disapproved by the entire Commission. Now it is proposed to reach the territory which Super Service has adequately and efficiently served by the use of alleged rights which are so defective on their fact as to necessitate a conclusion that the combination assumes that its sheer size will prove convenience and necessity of operation anywhere, once competitive carriers have been pacified. Insofar as the inclusion of Southeastern is concerned, the proposed report should be reversed.

Respectfully submitted,

ROBERTS & McINNIS,  
(Signed) By WILLIAM A. ROBERTS,  
WARREN WOODS,

*Counsel for Super Service Motor  
Freight Company, Inc., Protestant.*

DECEMBER 18, 1941.

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the parties of record with a copy of the foregoing Exceptions and Brief in Support of Exceptions, by mailing a copy thereof, with postage fully prepaid.

(Signed) WILLIAM A. ROBERTS.

DECEMBER 18, 1941, Washington, D. C.

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Before the Interstate Commerce Commission

Nos. MC-F-1612 and MC-F-1613

Application of ASSOCIATED TRANSPORT, INC.

For the Acquisition by Exchange of Stock of Control of Certain Motor Carriers, For the Merger Thereof, and to Issue Stock.

*Reply to exceptions.*

Filed Dec. 27, 1941

At long last an opportunity is presented to the applicant herein to answer the untrue and insidious insinuations, innuendoes, and charges persistently and constantly made during the progress of the hearings and in the briefs by the Anti-Trust Division in attempting to smear this application by reference to investment bankers, railroads, and various persons connected or associated with the late unlamented Transport application. During the progress of the hearings it was the duty of counsel for the applicant (as it should have been the duty of the Anti-Trust Division, particularly in view of the Commission's order governing their intervention) to refrain from unduly broadening the issues and to refrain from flights of fancy and speculations wholly without basis in fact. The Examiner correctly ruled that those matters to which we immediately address ourselves were not relevant to the issue and he properly dismissed the Division's contentions as being without merit. However, since the Division has chosen to devote a considerable portion of its briefs to a reiteration of untrue and inflammatory suggestions, apparently calculated to inflame and incite public sentiment against the application, we feel constrained to make reply regard-

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less of the fact that there are to be found in their exceptions no arguments not contained in their previous brief to the Examiner.<sup>2</sup>

In attempting to write a brief to the Examiner, applicant, because of sonorous protestations in the Division's petition for intervention and their various self-serving declarations made during the course of the hearing, had no reason positively to believe that it would be subject to attacks of a muck-raking or scurrilous nature or that the first brief of the Division, in the light of all the evidence in the case, would not take the form of substantial

751 recognition of the necessity and desirability in the interests of the public, of the consummation of this proposed merger.

We now recognize that the Anti-Trust Division having decided, for whatever reasons of its own, to usurp the regulation of transportation facilities, and having elected this case as a beach-head for its infiltration into the regulatory processes, then, regardless of the evidence or the merits of the application, it was bound, for reasons of tactics and expediency, to assume and contend by every means in its command that the application was monopolistic and inimical to the public interest.

We here state that our comment and criticism of the attitude of the Division is not intended as a personal reflection on any of its personnel, for whom individually we have the highest regard, but is directed rather at a group attitude or philosophy which has been well characterized by Max Lerner as the "corrosive detachment" school of economics. Whatever the justification for such philosophy and tactics on the part of governmental agencies in attempting to police and restrain unfettered and rampant free enterprise, we submit it has no place for its application in an industry now well regulated and properly dominated by the extensive and adequate provisions of the Interstate Commerce Acts and an experienced, competent, and honorable Commission.

The shippers, the farmers, the general public, and the trucking industry would indeed face a bleak transportation future were

<sup>2</sup> The exceptions to the proposed report of the Examiner filed by the National Grange and by the Secretary of Agriculture indicate that they support and rely upon the arguments, briefs and exceptions of the Anti-Trust Division of the Department of Justice. Applicant desires therefore that this reply shall be considered as an answer to the contentions of these two exceptions as well. (Examination of Section 201 of the Agricultural Adjustment Act of 1938 would seem to indicate that the Secretary of Agriculture, by his intervention in a Section 5 proceeding, may well have exceeded the quota of powers and duties allocated to his Department by this legislation.)

With respect to the query in the exceptions of the National Industrial Traffic League as to the reasons for the par values selected for the stock, we respectfully invite attention to pages 17 and 18 of our brief to the Examiner. The conversion price was arbitrarily arrived at and the applicant has no immutable position with respect thereto.

The exceptions of Andrew B. Crichton, et al., doing business as Super Service Motor Freight Co., dealing entirely as they do with the validity of the Knoxville and certain other operating rights of the Southeastern Motor Lines, Inc., and being wholly irrelevant in a Section 5 application, take on more the aspect of a stray pot shot in a continuance of the Tennessee mountain feud inherited by these two truck lines from their "grandfathers" of the bellum days ante June 1, 1935. They seem not to require a reply.

there to be general acceptance of a way of thought which conceives regulation solely from a policeman's or a prosecutor's perspective. Was it the theory of Congress in providing for motor truck legislation that this great young and growing industry should be frozen at its then stage of development, or rather was it intended that safe, adequate, economical, and efficient service and sound economic conditions among the carriers should be provided to the end of promoting and preserving a national transportation system adequate to meet the needs of commerce and of the national defense. Was not the Interstate Commerce Commission entrusted with the all important task of guiding the future and natural growth of the industry through leadership, direction, and the lighting of beacons along the way, towards the fulfillment of the national transportation policy, or was it intended that it should be committed solely to the task of forbidding all progress lest through some future laxity in its administrative processes any of a million imaginable fanciful improbabilities might lead to an undesirable situation?

The present application is before the Commission for the many cogent and imperative reasons set forth at length in the testimony and in the applicant's brief as submitted to the Examiner and which need not be repeated here. The Commission's decree in the Transport case was, and is still, believed by the operators here involved to have been intended as constructive regulation. These cautious but forward-looking operators understood that in that decision, the Commission, in its experience and wisdom, had indicated the road leading to improvement and security for them and their companies within the industry and which road they had theretofore been unable to see or understand. They understood from the decision that through cooperative effort, by a compliance with the Commission's requirements as set forth therein, there was open for them a path which would lead neither to bankruptcy and frustration nor to divorcement from their properties and from the industry they helped to build and of which they desired to remain a part.

They are deeply concerned and more than a little resentful that their sincere and honest efforts to improve and safeguard the future of their businesses and the industry and to comply with what seemed to be the Commission's clear and unmistakable blazing of the trail has resulted in bringing down upon their heads a storm of vilification and abuse unprecedented in their business experience. They are lead to wonder at the ways of their stern regulating parent which directs them to a road which can only be traversed with great travail and expense and then seems to invite and almost encourage the pack to attack them along the way.

and they are fearful lest as in the Russian story some of them may be sacrificed to the wolves.

It may well be that this Commission will feel we are unduly excised over what the Anti-Trust Division no doubt regards as just good clean fun. On the other hand, over a period of about five years the operators, through real effort on their part, have come to have a very workable understanding of the principles and implications of regulation, its desirable as well as undesirable aspects, and appreciate more and more the limitations surrounding their freedom of action in their efforts to make progress in the face of inroads of other transportation agencies. In

754 their own field of motor truck transportation, it has, for some time, been apparent to these operators that eternal vigilance and ceaseless effort is the price for holding their own against growing competition. The larger lines are caught between three fires:

"(1) They are the direct targets for air, water, rail, and express companies.

"(2) Because they are among the comparatively large lines in an industry of small units, the demands placed upon them by the shipping public with respect to quantity and quality of service grown constantly more meticulous and extreme, requiring ever more and more effort to satisfy customers and give service in their established territory.

"(3) In the face of these demands, which they are not financially and physically able to meet, they are sniped at, raided, and invaded by smaller lines with less overhead which in the past, having more territory than they could adequately serve, have now, through increased profits, brought about by specialized movements and increased tonnage, multiplied their competitive efforts for more business. Many lines, formerly very small, have grown substantially through mergers or acquisitions so that they are becoming new factors in many territories and, through their greater flexibility resulting from smaller size, skim the cream of the business. Certain large lines, having rights of wide scope and high earnings because of peculiarities of operation or territory in at least parts of their system, are becoming more important within the eastern seaboard."

The many quirks and problems of the trucking business are very real to the operators but apparently nebulous indeed to the

Division's representatives, economists, and theorists apparently conversant only with great unregulated industrial enterprises. Indeed only on this latter theory can we credit the Division with the sincerity and the high public-mindedness which they have repeatedly professed during these proceed-

ings. Under smooth-sailing business conditions covering a long period of years, it is conceivable that by the processes of natural growth, the plowing back of earnings, the integration of partially cultivated intermediate territory, and the step by step of minor acquisitions, there could be brought about an integrated system of transportation adequate to meet the needs of the territory involved in this application. Yet, as a practical matter, even under such Utopian conditions, this result is more than questionable, since the inevitable would be countergrowth and counterattack by groups of lines whose territory was invaded and there would follow economic wars and competition of a bitter and destructive nature which could not serve the public interest, and which would be the continuation of just the sort of destructive competition Congress sought to obviate by the passage of the Motor Carrier Act. Such idle and wishful thinking is, however, to forget the present emergency, the disruption of ordinary channels of industry, the urgent necessity for immediate movements of defense materials, and rising prices, all of which threaten the very existence of the larger carriers who must sustain the greatest of these blows and burdens, as well as to forget the tax situation which economically for many years to come closes the door to "boot-strap" expansion of these overexpanded large lines.

766 . The shipping public and the Commission are, or should be interested, not just in the trucking service between long or medium long haul points, but in a network of integrated service between all communities in a large territory, which of necessity must include in proper proportion short, medium, and long haul operations. Such a service is essential to the public needs. Towns, villages, and hamlets and even small cities in nonpopulous territory cannot support an adequate administrative organization and the necessary extra equipment and facilities to take care of fluctuations in traffic and regular service at anything like prevailing rates. With the growth of the power and demands of the unions, cost advantages which the truck lines had in the past on fifty to two hundred mile hauls, as opposed to the railroads, have largely disappeared. Common carriage by motor vehicles, as now operated in much of the territory, involves pick-up of freight on L. T. L. shipments at the shipper's dock by a local truck, the transfer of this freight at the truckman's dock to a road unit, transportation over the road to the terminal of the delivery city, transfer of this freight to a delivery truck, and finally transportation by the delivery truck to the consignee's dock. Operating conditions may even require one or more handlings at different intermediate docks between the city of origin and the city of destination. The movement must be handled ex-

actly as such a movement by rail with its concurrent pick-up and delivery by truck, and the union rules in much of the territory are such that road trucks and road drivers are not permitted to make pick-ups and deliveries of L. T. L. merchandise, 757 or when this is allowed a penalty of one or more dollars per stop is provided in the union contracts and then the number of stops limited to not more than three or four. Regardless of the fact that longer hauls give a diminishing rate of return per mile because of the rail set-up, nevertheless hauls of three to five or more hundred miles are necessary to break even on L. T. L. shipments, if sufficient revenue is to be obtained to offset the pick-up and delivery and dock handling cost. These are all factors which the Commission must know from its examination, analysis, and comparison of the various types of trucking operations involved not only in this merger but from the reports of other lines on file with the Commission. Testimony along these lines was adduced in this proceeding. The situation is apparently incomprehensible to the Division who, in spite of their claim of intervention only to be of assistance in developing the facts, chose to attempt to block all efforts to detail these facts on the hearing.

Except through the granting of this application, produced, as we have before suggested, in accordance with what seemed to be the clear design set forth in the Commission's decision in the Transport case, it is difficult to see from what source the public can hope to achieve an adequate transportation system.

The avowed purpose of the intervention of the Anti-Trust Division in this proceeding, as set forth in their letter under date of August 15th, 1941, addressed to Chairman Eastman, of the Commission, is as follows: "The reason for my request is that jurisdiction to determine whether unification of carriers 758 unduly restrains competition has been given to the Interstate Commerce Commission. The Anti-Trust Division is the only government agency in a position to present evidence on the monopoly question from a point of view of the public interest. Evidence presented by private parties necessarily must be colored by their own property interests in the controversy. Therefore, we feel that it is part of our duty to complete the record before the Commission with such evidence as we have discovered in our investigation of transportation monopolies." Presumably the Commission accepted this communication at its face value and, in good faith, thereafter issued an order permitting the intervention of the Division. Certainly, except for the fact that this communication came at the eleventh hour and included therein a request for an unreasonable delay, there was nothing about it which might have indicated it was the intention of the Division to do

other than what they claimed to be their duty, namely, to spread upon the record certain facts pertinent to this case which their alleged "investigation of transportation monopolies" had disclosed. Probably the Commission, as did the applicant, looked forward with interest to the disclosure of the facts to which they referred. It was only as the hearing progressed that there became apparent the Division's intention to obstruct the expedition of the proceedings by every means at its command from repeated requests for adjournments to objections to testimony; that contrary to their avowed purpose they were not interested in the facts being fully presented to the Commission, and that in effect they had sought and obtained permission to intervene  
759 by misrepresenting their intentions to the Commission, for at no time during the hearing did they call any witness or

endeavor in any manner to produce testimony respecting any investigation which they had made in the past of alleged transportation monopolies.

They did produce two witnesses on the subject of this application, concerning whose testimony the Examiner, in his report, was undoubtedly too charitable to comment. We also refrain from a further discussion of these witnesses other than to invite the Commission's attention to their testimony and to the footnote on page 29 of our brief to the Examiner.

A reading of the record in the case renders it apparent that it was never the Division's intention to develop the facts of the case through their cross-examination of witnesses, but on the contrary to seek to develop, by confusing and immaterial questions, a few words or statements here and there throughout the record as a basis for supporting the unreal and scandalous arguments set forth in their brief to the Examiners and in their exceptions to his report. This is borne out by the nature of the arguments made in support of the exceptions. They commence by what can only be a calculated distortion of that part of Examiner Baker's report which deals with the legislative intent in the passage of the Transportation Act of 1940. The Examiner stated, "There are many thousands of motor carriers of property subject to the Commission's jurisdiction. Many of these are very small, and no

doubt small motor carriers will continue to have their place  
760 in the industry. On the other hand, it would seem that large motor-carrier systems, comparable in size and strength with units of competing forms of transportation, should also have their place in the transportation industry. Recent legislation shows a Congressional intent to encourage railroad unifications. In view of the national transportation policy, as declared in the Act, it cannot be supposed Congress intended that

the motor-carrier industry, a coordinate and competing form of transportation, should be discriminated against in such respect. On the contrary, considering the much greater number of motor carriers of property and their relative size as compared with railroads generally, the need for unification in the trucking field is more apparent than in the case of railroads which have already had many years of development." The Division, although pretending to set forth a part of this language and enclosing it in quotation marks, tampers with the record by deleting the words "units of" from in front of "competing forms of transportation" and on the basis of that part of his report as doctored, they sarcastically suggest that the Examiner proposes, "That the Commission should encourage, approve, and establish motor-carrier system in size and strength of our great railroad systems!" When we recall that this is the action of one government agency commenting on a judicial officer of another government agency, to quote from their own brief, "It may not be inappropriate to inquire—where does the public who pays the bill 'get off' in such a concept of public responsibility?"

761 We confess our inability to follow the trend of their argument on page 39 which seems to be that the Examiner and the applicants have somehow conspired to promote a "regulated monopoly" (or perhaps an unregulated one), and to turn over to this monopoly the public highways of the country. They attempt to prove this on their theory that railroads have the ability to perform mass transportation and trucks do not. (We suppose this is another way of saying they should have a natural monopoly of such movements.) Railroads, they say, own their right-of-way and thus have a monopoly thereon (and they defend the railroads' right to be entitled to a fair return on their investment in creating such a monopoly). A motor carrier for hire, on the other hand, they continue, operates on the public highways and (contrary to the findings of Mr. Commissioner Eastman, who was empowered to investigate such matters), apparently pays nothing for the use of the public highways and arbitrarily and regardless of the interest of the shipping public should be confined to such territory and such amount of business or of financial stability as under no circumstances may be deemed to imperil the "fair return" of a railroad on its monopoly of its private right-of-way (which so often was secured by the abuse of governmental power of eminent domain and through government land grants or otherwise from the pockets of the citizens, and in which position the railroads are intrenched through the certification processes of governmental regulation). To reiterate, the essence of their argument would seem to be that "regulated

762 monopoly" has not yet been accepted in the field of national transportation but they attempt to prove this by justifying regulated monopoly for railroads as being the national policy. Then, in spite of the fact that the Examiner has emphatically found no monopoly of any sort would result from the granting of this application, they accuse him of attempting to force "his concepts of regulation of the railroad industry upon the motor carrier industry." We do not understand that kind of double talk, and, if we may borrow again from their brief, "surely a broader understanding of the problem than here shown is necessary if the public interest in the motor carrier industry is to be safeguarded."

On pages 40-41 they continue with another series of reductio ad absurdum arguments. By isolating a phrase from the Examiner's discussion of competition, and paraphrasing portions of the proposed report dealing with this subject, they would have it believed that the Examiner had found the proposed unification would result in a monopoly contrary to law and that approval by the Commission would be to place its blessing on such a result. The Examiner made no such findings and no such recommendation, as is readily disclosed by a perusal of sheets 24 and 47 of the proposed report. What the Examiner did state was that substantial competition presently exists between certain of the carriers involved and that it would be eliminated upon the consummation of the transaction. He then stated, "However such

fact alone is not controlling," and proceeded to give not 763 one but several reasons therefor, including the fact that Section 5 of the Act was designed to permit unifications which might result in restraining competition within the meaning of the Anti-Trust Laws where the disadvantages of such restraint were offset or overcome by other advantages to the public, and including the statement that the question of whether unification would be consistent with the public interest was to be weighed not only in the light of potential elimination of competition but weighed as well in the light of remaining competition. His devotion of the next sixteen pages of the report to a thorough and exhaustive study of remaining competition, and his recommendation to the effect that there would remain adequate motor carrier competition as well as rail competition, and that the proposed transaction would not result in an undue restraint of competition, indicates that invoking of the support of Section 5, Sub. 11, was not required. This is a far cry from any theory that the public interest with respect to the competitive aspects of the case was disregarded, bludgeoned into insensibility with a club from Section 5, or the advocacy of a doctrine of "regulated monopoly."

The applicant trusts that the Commission will not permit the Division by its transparent red-herring device of an all-out attack on investment bankers, permit the genuine public interest in the consummation of this transaction to be lost in the battle-clouds of this diverting flank attack.

Under oath the truckmen involved in this application, 764 whose names and reputations are well known to this Commission and whose integrity and honesty have never before been questioned, have sworn that this merger is not a scheme or device to carry out or accomplish by another method any purpose of Kuhn Loeb, the railroads, or any other concealed or disguised interest. This is a genuine cooperative effort on the part of the truckmen owners of seven of the eight carriers, and any similarity or relationship to the Transport deal arises solely from the fact that the genesis of the plan is to be found in what was read as the plain dictum of the Commission in its lengthy decision dealing with that case. The eighth carrier, Arrow, which, as of the time of its contract with Associated Transport, was not controlled by truckmen operators but rather by Kuhn Loeb, was included in the transaction solely because it was regarded as a useful although not wholly necessary part of a unified operation serving the involved territory. Since the operators in organizing this deal dealt forthrightly with the merits and requirements of an adequate public transportation system, they did not perceive that because investment bankers had an option on Arrow they might be called upon to defend this company and themselves from vicious and unwarranted attacks. Had this occurred to them at all, they would have dismissed such a thought as ridiculous because of their confidence in the Commission. The investment bankers were not acquiring the Associated Transport Company. Associated was acquiring a trucking property from investment bankers, and the resulting percentage of stock which such bankers would receive was less than ten percent. Phoenix Securities had owned a

765 large percentage of Consolidated Lines for years without interference with its operations or any railroad attempt to acquire these securities. As of today it can not be stated that the applicant will be able to acquire Arrow under any circumstances. By the terms of their contract with Arrow, Kuhn Loeb was to complete the transaction on December 18th. Applicant is informed that this has not happened and that they have secured a further period of a few days in which to reach a decision in the matter. The Commission will be promptly advised of any information received on this subject.

It is not the purpose of this brief to defend the Transport deal. The operators here concerned bore only the relationship of sellers to that transaction. They were neither in control nor responsible for whatever the situation was in that matter. The instant application is a cooperative enterprise designed to pool resources, obtain new finances, and perpetuate management and control in the operators and their families. It will preserve the best features of the lines involved, improve the service, effectuate economies, stabilize the industry, and provide the only possible foreseeable future for these businesses other than the undesirable alternatives of outright sale of their individual properties to some strong financial interest, the more imminent event of liquidation to satisfy taxes in the event of death of substantial stockholders, or potential liquidation of the businesses in the bankruptcy court in the hazardous future. So sincere is the feeling of the operators 766 that control of this proposed enterprise must remain in the hands of experienced truckers that they would not hesitate to accept any reasonable order or suggestion of the Commission looking to this end.

As has been testified, there is no agreement, express or implied, for the sale or other transfer to Kuhn, Loeb of any securities beyond that fully set forth in the exhibits and record. It is, and has been, the intention that any arrangement for the handling of the 15,000 shares of preferred stock will be by competitive bid in the sense that it is proposed that negotiations be carried on with many as yet specifically unconsidered firms or persons who might be interested in the transaction. The net result of negotiations would be submitted to the Commission for their approval. This procedure was determined upon for many excellent reasons, including the reason that so far as within its powers applicant desired to have control over the hands in which the securities might fall. Putting it another way, they find themselves criticized by the Division for attempting to adopt a procedure which they felt might enable them to insure securities going into the hands of the general public rather than possible adverse interests, which it might have been very difficult to do under formal competitive bids as against informal competitive bids. It was further felt, and is still the opinion of the operators, that a better price could be secured and the public's as well as their own interests protected by making the best deal possible and then submitting it to 767 the Commission. Under formal competitive bids the very result, which the Division fears, might be brought about.<sup>2</sup>

<sup>2</sup> In accordance with the Division's procedure of misquoting and misparaphrasing testimony, Division says, page 37, "Mr. Seymour testified on query from the Examiner that these securities should be marketed through competitive bids but on question through his own counsel modified his position," thus attempting to infer that which is not the fact, namely, that Seymour said first that there would be competitive bids and then that there would not.

The operators deserve in this brief to brand as untrue the Division's statement on page 45 concerning this merger, "It was railroad-banker promoted in its inception and still is."

The applicant flatly denies that the failure of the rails to protest this application was at its instance or request or that it has any knowledge concerning the matter. There are many sound reasons why the rails may not have appeared, such as their possible desire to see more order in the industry, the fact that any particular railroad's interest in the territory involved is sectional, the fact that they may regard the consummated unification as one fly to swat instead of eight, their fear of shipper displeasure and retaliation should they intervene, a better understanding on their part of the national transportation policy, or the even still more practical reason that they as well as the truckmen appreciate from bitter experience the nature, extent, and severity of the competition between truck lines in the territory other than those involved in this transaction, and therefore understand and know the ridiculousness of any claim of a resultant monopoly.

Only one of the more than a thousand other truck lines in the territory for whom the Division is so concerned protested this application, and that company's protest was directed solely to the inclusion of the Southeastern Motor Lines and to grounds connected only with operating rights. While this non-protest from truckmen is a complete answer to the Division's fears that "The lines to be merged will, if this merger is approved, secure an absolute and unshakable hold on long-haul motor carrier traffic throughout this area," nevertheless one wonders why the Division has not discovered in this lack of protest proof of a "gigantic"

Examiner Baker: Do you believe that marketing the security, through competitive bids would be practicable?

Mr. Seymour: I can assure you, Mr. Examiner, that they will certainly market them through competitive bids.

Mr. Sullivan: I wish you would explain your question a little.

Mr. Examiner: I think you are using that in a rather technical sense, are you not?

Examiner Baker: What I had in mind is, instead of making a private agreement, that is, making an agreement through private negotiations with an underwriter, you would solicit bids from various underwriters.

The Witness: That is what I understood.

Examiner Baker: For the purchase of the entire issue of securities.

Mr. Sullivan (addressing himself to Examiner): In a rather formal manner, you have in mind, rather than by informally trading with several underwriters and then agreeing with the one that for various reasons, was felt to be best suited? You are thinking rather of a more formal method of doing it are you not?

Examiner Baker: Yes, that was my question.

Mr. Sullivan: Yes, I do not think Mr. Seymour understood his answer was directed to that, to the idea that he generally did contact a number of underwriters and to make the best deal possible.

Mr. Seymour: That is what I thought you meant.

Examiner Baker: Well, you did not have in mind, then, the formal solicitation of bids.

Mr. Seymour: Well, I had never really considered very seriously the detailed procedure that we might follow, other than that I was sure that preferred stock, as I have described it, in a company of this kind—that I did certainly think that we would have more than one or two opportunities to market the stock. I am sure that there are going to be several of them, and, obviously, we would not know where we could make the best arrangement.

We submit that assigning to Seymour the intent of having anything but informal competitive bids is another attempt to mislead the Commission.

conspiracy by which applicant, to obtain a monopoly, has persuaded the other truck lines to commit Hari-Kari.

It is indeed to "labor" a point to claim that the railroads' non-protest constitutes a keystone of proof of their wicked intention to acquire control of the merged companies, and such Charlie Chan reasoning is about on a par with the quality of logic which  
769 draws a parallel between Kuhn, Loeb's attempted acquisition as promoter's fees of "approximately one-tenth of the value of Transport's stock" and the Division's astounding discovery that "Kuhn, Loeb and Company will have, if this merger is approved, approximately the same percentage of stock interest in the new company, Associated Transport, Inc." To bring this rabbit out of the hat, it was necessary in the case of the Transport Company to assign a hypothetical value of \$22 a share to that common stock, and in the Associated's case (1) totally to disregard the fact that the Associated stock which Kuhn, Loeb would receive was in exchange for the stock of the Arrow Corporation, for which it was obligated to pay out of its pocket \$1,107,000 in cash as well as giving Associated other consideration in the form of cash and valuable records; and (2) to entirely eliminate from the Associated's capital stock structure \$1,500,000 preferred stock to be sold for working capital, no part of which was to go to Kuhn, Loeb.

The overzealous and unsuccessful efforts of the Division to turn up in the closet of Associated the triple skeletons of monopoly, investment bankers, and railroads recalls the delightful children's verse of A. A. Milne,

"I'm looking for an elephant behind another elephant behind another elephant that really isn't there!"

The proposed consolidation will result neither in undue elimination or restraint of competition nor will it be a "regulated monopoly." Any unification of carriers, competing even  
770 in part, must result in the numerical reduction of the number of competing carriers in a given territory, just as any commercial contract is a restraint of trade, but it does not necessarily follow that the effectiveness of competition, particularly in the motor-carrier field, will be materially lessened. As the Examiner indicated, and as the record and the Commission's experience must bear witness, there are "advantages in certain respects which smaller carriers have over large ones through their intimate relations with shippers and ability to render a more personalized service." Shippers have a tendency to divide traffic among competing lines. A real effort would be necessary on the part of applicant even to hold its present proportion of the total tonnage moving by truck in the effected territory. It is obvious that applicant, for reasons of common-sense and economy, would

not be able to use its present number of solicitors at any given point where the lines overlap to call on the same shipper and as the general manager of one competing truckman testified his company will be in a better position from a solicitation standpoint if the carriers are merged. Considering the great number of motor carriers presently operating in an industry characterized by the severity of its internal competition, is it not the more likely result that in the broad aspect of the matter competition with rail and other competing forms of transportation will be enhanced through the greater financial stability and all-around efficiency of applicant, and in the narrower field of intratruck competition, there will be little change?

The Department of Justice attempts to make much of the 771 size of the operation which would result from approval of this application. Admittedly at its inception it would be a company larger in gross volume than any other presently existing truck line. The Department is so upset by this fact that it terms the transaction a "giant merger" no less than six times in its brief (pages 2, 3, 42, 44, 47). Gulliver was a giant to the Lilliputians but a dwarf to the Brobdingnagians. Compared with rail, water, air, or even motor-bus companies, the applicant would be small. Even in the trucking industry applicant would not be appreciably larger in revenues than U. S. Truck Lines System nor in territorial area larger than the Interstate System. The query arises, if applicant's \$18,000,000 revenue in 1940 is an unmitigated evil to be abhorred, then must not the U. S. Truck Lines System with its fourteen or more million dollar revenue be purged (and they are presently in the process of acquiring another operation of great territorial scope, unhampered by the crusading of the Division). They are presently the largest truck system in the country, and this seems to be some sort of a crime. Logically it would follow then that when they were put out of the way, the same attention should be devoted to Interstate, and so on, until presumably truck transportation would be performed only by lines with one truck each and each with perhaps one hundred dollars of capital.

The Examiner refers, pursuant to stipulation entered into by the parties during the hearing, to the records of the Commission which indicate that the gross operating revenues in 1940 for Class I carriers, whose principal operations were in the New Eng-  
772 land, Middle Atlantic and Southern regions, are respectively \$40,082,627, \$97,449,156, \$49,051,190, or a total of \$186,582,937. Since the Commission's records further indicate that the total annual revenue of Class I carriers of property are probably less than half the grand total of all motor carriers of

property whose rates and service are subject to the jurisdiction of the Commission, it is indicated that the total revenues of motor carriers of property in the effected territory are probably at least \$373,165,946. The proportion of applicant's revenues of \$18,705,264 for the same period is approximately five percent. Assuredly this is a meager proportion of the total revenues and hardly a justification for the great clamor of the tocsin of monopoly which the Division seeks to sound.

Records of the Commission further indicate that there are subject to its jurisdiction upwards of 600,000 vehicles. Applicant's 3,000 vehicles would be half of one percent—an unlikely basis for the "cartelization" of an industry.

Aside from paying their compliments to the Examiner's approach to his duty as being "naïve" (page 5), his findings as "absurd" (page 44), his report as "feelingly written" (page 7), and failing "to deal with realities" (page 5), "in his anxiety to justify the proposed merger" (page 2), the Division subjects this officer of the Commission to the corrosive accusation that his exposition of motor-carrier competition for local or regional business was a "smoke screen" and "device" of "misleading comparisons" (pages 41 and 42, etc. The Examiner, 773 they say, would attempt to mislead the Commission by comparing the "\$40,082,627, total operating revenues for 1940 of Class I motor carriers in the six New England states" "with the aggregate 1940 revenues of Consolidated and McCarthy of \$6,467,173" for operations in three New England states (page 42). But the Commission's records, the facts, and the testimony are that all substantial trucking operations in New England are confined to Massachusetts, Connecticut, and Rhode Island, and McCarthy has sizable operations extending into New York State as well as a large percentage of revenue derived from interchange in that state, and Consolidated has most extensive operations in the states of New York, New Jersey, and Pennsylvania and derives a considerable portion of its revenues from such operations! Here, in their argument, is indeed the "razzle-dazzle" of which the Division speaks.

Examination of their contentions with respect to the Middle Atlantic and Southern regions finds the same kind of performance repeated and even more glaringly apparent. Although the Examiner has followed the classic, only practical and proper method in such cases of making comparisons between the revenues involved in the proposed unification and the revenues of remaining competition, they are pleased, no doubt through unfamiliarity with the practices and decisions of the Commission, to term it a "device used by applicant to illustrate competition." What other method

would they have the Examiner and the Commission use? They volunteered their expert services to the Commission in this proceeding lest in its naivety the Commission be misled by 774 applicant. One would have expected, after the delays sought and secured to study the case, that there would have been produced a practical substitute method and testimony which would have made this whole subject, as they would say, "crystal clear." The labors of the mountain produced only the mouse of witness Berquist's conclusions on the subject of competition in the effected territory and the effusions of a retired-railroad man with opinions "colored" by his own "property interest" as a water carrier who believes that the ancient railroad ways are the best. We invite the Commission's attention to the discrepancies between the facts and its records on the one hand and the opinions and conclusions of these witnesses on the other. The result of such a comparison would hardly, in the interests of accuracy, commend a substitution of the Division's methods for those of the Commission.

The Examiner in his report, says the Division, "deals at length with motor truck operations in the territory of the individual carriers concerned as related to the existing operations of such carriers but avoids all mention of motor carrier competition to those lines merged into one gigantic carrier." This statement shows a fundamental misconception of the nature of the trucking business. The Division, consciously or inadvertently, loses sight of the fact that the main volume of traffic will move in the future in the same territories and between the same points and places as it has moved in the past. Approval of the proposed transaction will neither change the shippers nor will it effect their markets. While improvement in service and efficiency of 775 operation may, and it is hoped that it will, result in attracting some business presently moved by competing forms of transportation, nevertheless, as we elsewhere indicated, this effect will be to enhance the competition with rail lines rather than to stifle any competition in the trucking industry. Indeed it appears from the testimony, the Commission's records and the Examiner's report that there are in the territory substantial lines as, for example, Akers and Carolina Freight Carriers, who have operating rights and offer direct service from the deep south to as far as New York State and northern Massachusetts, and that presently within the component companies of the merger there are no such operations. Approval, therefore, will add to rather than detract from the competitive situation respecting freight movements between these points. The Division insists (page 23) that the applicant failed to produce evidence showing common motor truck competition from Boston, Mass., to New Orleans, La. The

testimony was that there presently was no such truck service. Assuming that the applicant contemplated such a service, the Commission should indeed be surprised by a theory that the public interest requires persons desiring to ship by motor truck between those points must be deprived of the benefit of the institution of such a service for the reason that if there is no presently existing service one can not be inaugurated because, being the only operator, it would have a monopoly.

The remarkably convenient memory of the Division permits them to state (page 44 of their brief) that there is no testimony to support a finding that all of the principal points and many others are served by one or more rail carriers and that additional competition is provided by contract carriers and by carloading and forwarding companies. Applicant's Exhibit 18, introduced by the witness Mead and supported by considerable testimony as to the manner and method of rail operations through the territory is before the Commission as it was before the Examiner. The witness Mead also testified as to carloading operations in the territory, as did the shipper witness Tupper and various other truckers and shippers. They also avail themselves of this forgetfulness to suggest that the Examiner fallaciously based his findings on a theory that such competition is common knowledge of which the Commission could take judicial notice. Their memory of the quantity and quality of the evidence respecting rail and water carriers then apparently revives sufficiently to impel them to take the precaution of arguing that discussion or findings relative to such competition should be rejected in this case since they claim we are primarily concerned only with competition as between common carriers by motor truck. Such shifty open-field running leads to the surmise that the arguments just referred to were made only to produce a *raison d'être* for the next paragraph in which they attempt to influence the Commission, as they had previously attempted to intimidate the Examiner, by the wholly gratuitous inclusion in italics of a totally unveiled threat of court action if the Commission should have the temerity to decide this case in any manner contrary to their wishes.

Circumstances and time make impossible a seriatim and complete analysis of the Division's torture and distortion of the record, facts, and law. We make one further illustration by another quotation from their brief (page 47). Referring to the claimed economies they say, "The Examiner rightly characterizes evidence thereon as 'largely speculative'." Sheet 14 of the proposed report discloses that what the Examiner said was, "The evidence with respect to the amount of economies which can be effected is largely speculative, but there can be no doubt

that they would be important and substantial." Indeed, the Department of Justice Is Blind!

There seems to be something artificial and forced about the various fears expressed by the Division as to the end result of approval of this application. The present state of world affairs and the development of the trucking business, including the businesses of the component companies of the applicant, cry out for this unification as an offset and fighting weapon against whatever degree of rail monopoly presently exists. Any fears that the rails will acquire control of the applicant and thus expand or clinch their monopoly (which monopoly the Anti-Trust Division oddly enough seems to concede and condone (pages 39-41)) can only be based on the assumption that the Interstate Commerce Commission or other governmental body having jurisdiction of the matter will fail to enforce the provisions of law expressly designed to prohibit, without Commission approval, the accomplishment of such an eventuality. The same may be said with respect to the expressed suspicions that by or through the investment banking

778 firm of Kuhn, Loeb the same undesirable result might be achieved. While, from the present state of the statute it is not unlawful for Kuhn, Loeb to acquire control of a single truck line, including Associated Transport, yet aside from the fact that the truckmen themselves are not and would not be willing parties to such a procedure, nevertheless the law and penalties are sufficiently stringent to prevent Kuhn, Loeb or any one else, if they could acquire control of these properties, from managing them in the interests of the rails. If it is desirable in the public interest that independent truck transportation be preserved and fostered as a fresh and vital competitive influence in the transportation field, then so much more weighty is the argument that units of sufficient size and financial stability must be encouraged so that competition with other forms of transportation may extend beyond the point where it is presently likely to stagnate.

The Division has chosen to suggest that the Commission should not use the National Emergency to disregard its duty of deciding the case on the merits and foist on a distracted public a unification which at another time should be denied. The applicant throughout the proceedings and in its former brief has scrupulously refrained from stressing the immeasurable benefits to the National Defense and the public safety which necessarily must flow from the consummation of this unification. That the Division makes such a representation to the Commission is a recognition on their part of the utter and terrible necessity of coordinating and consolidating truck transportation lest the country experience the transportation chaos so wide-spread in England and

other countries from the first bombing of ports and rail facilities and concentrations. Applicant has felt, and still feels, such confidence in the other merits of the application that it desired to leave without comment the determination of such a matter to the sound judgment and sense of duty of the Commission members lest any one could urge that these truckmen sought to perpetuate another sin in the name of National Defense. The component companies of Associated Transport are presently and to the utmost of their ability devoting their time and effort foregoing profits in an all-out endeavor to do their part in these times. While they are naturally fretful and impatient that the legal processes delay the consummation of this unification which they earnestly believe will make possible a tremendous increase in their efficiency and usefulness, nevertheless, regardless of the outcome of these proceedings, there must not be and will not be any relaxation of their efforts in the public interest.

In closing, it is respectfully submitted to the attention of the Commission that, considered in the light of the plain facts of this case and the total lack of connection between the Division arguments and the law which the Commission is charged with administering, there seems to be no escape from the conclusion that the Anti-Trust Division, pursuing the concepts peculiar to its economic and political philosophy, seeks through its intervention herein to thwart the will of the people as expressed through their Congress and by extralegislative process to nullify the Motor Carrier Regulatory Acts and to negate the powers of the Motor Carrier Regulatory Body for the dual purpose of restoring the "free market" in transportation and transferring the policing of this industry to the Division's group of economic and legal technicians who would then become the Bottleneck of the Trucking Business.

The application should be approved and without undue delay.  
Respectfully submitted.

CLAUDE A. COCHRAN,  
HUGH M. JOSELOFF,  
MORTIMER A. SULLIVAN,

*For the Applicant,*  
1775 Broadway, New York City.

DECEMBER 26, 1941.

CERTIFICATE OF SERVICE

I hereby certify that I have on the 26th day of December 1941 served a copy of the foregoing document on all parties of record in this proceeding by mailing a copy thereof, properly addressed and with postage paid.

WILLIAM F. KLEPS.

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORP. ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

HEARING ROOM "B,"

I. C. C. BUILDING,

*Washington, D. C., Monday, January 26, 1942.*

The above-entitled matter came on for oral argument before the Commission at 10:00 o'clock, a. m.

Present: Commissioners Aitchison, Acting Chairman (presiding), Lee, Mahaffie, Splawn, Alldredge, Patterson, and Johnson.

Appearances: Mortimer A. Sullivan, Prudential Building, 1775 Broadway, New York, New York, appearing for Associated Transport, Inc., applicant. H. D. Horton, Charlotte, North Carolina, appearing for Associated Transport, Inc., applicant. B. M. Seymour, 1775 Broadway, New York, New York, appearing for Associated Transport, Inc., applicant. Everett J. Arbour, 1179 Main Street, Hartford, Connecticut, appearing for Associated Transport, Inc., applicant. Leonard D. Adkins, 15 Broad-  
783 Street, New York, New York, appearing for Associated Transport, Inc., applicant, and Kuhn, Loeb and Company. John S. Burchmore, 2106 Field Building, Chicago, Illinois, appearing for the National Industrial Traffic League. Haskeell Donoho, Solicitor's Office, U. S. Department of Agriculture, appearing for Secretary of Agriculture. W. S. Campfield, Box 718, Staunton, Virginia, appearing for Virginia State Horticultural Society. Berks-Lehigh Fruit Growers, West Virginia State Horticultural Society, and Appalachian Apples, Inc. Warren Woods, 735 Transportation Building, Washington, D. C., appearing for Andrew B. Crichton et al., d/b/a Super Service Motor Freight, Nashville, Tennessee. Thurman Arnold, Assistant Attorney-General, and Arne C. Wiprud, Special Assistant to the Attorney-General, Department of Justice Building, Washington, D. C., appearing for Anti-Trust Division, U. S. Department of Justice. Herbert S. Thatcher, Washington, D. C., appearing for The International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers.

## PROCEEDINGS

Act. Chrmn. AITCHISON. The Commission has assigned for argument this morning Nos. MC-F-1612 and 1613. Mr. Sullivan, the applicant.

Mr. SULLIVAN. Mr. Chairman, Mr. H. D. Horton will proceed first for the applicant.

Act. Chrmn. AITCHISON. I don't have his name, sir. What is it?

Mr. SULLIVAN. Mr. H. D. Horton. Mr. Horton is the president of the Horton Motor Lines.

Act. Chrmn. AITCHISON. Oh, yes. That is all right.

Mr. SULLIVAN. Mr. Horton.

Argument of Mr. H. D. HORTON:

Mr. HORTON. Mr. Chairman and Gentlemen, I desire not to make the following statement extemporaneously. Arrow Corporation, having sound intra- and inter-state operations in the territory between Paterson, New Jersey, and Allentown, Pennsylvania, was included in the merger as being a desirable part of a sound, integrated public transport system in the affected territory. I have testified fully as to the value of Arrow's operations. Because Arrow stock was under option to the Transport Company, which in turn was controlled by Kuhn-Loeb and Company, an investment banking firm, it was necessary for Associated to make its acquisition contract with Transport instead of with Arrow stockholders.

786 We have recently been informed, and have so notified the Commission and the parties, that the Transport option expired as of the end of 1941. The contract between Transport and Associated is the uniform contract and was not calculated to cover the situation which has arisen. By a combination of circumstances, over which Associated has no control, Transport is in a position to, and does, claim that under the contract Associated is not released by the expiration of option from its obligation to acquire Arrow if the Commission approves the inclusion of Arrow in the merger and if Transport is able to negotiate a new contract to acquire Arrow by closing date.

The applicant does not willingly acquiesce in this state of facts. Accordingly, we have agreed to make available a few minutes of time to Mr. Leonard Adkins, attorney for Transport and Kuhn-Loeb Company, who no doubt will be able to present the claimed rights and equities of their situation more clearly and with more enthusiasm than the applicant. I do not propose to deal further with Arrow in my presentation.

Act. Chrmn. **AITCHISON.** Mr. Sullivan.

Mr. **SULLIVAN.** Sir, Mr. Horton, will continue for the applicant.

Act. Chrmn. **AITCHISON.** Well, is somebody going to make a statement of this case?

Mr. **SULLIVAN.** Mr. Horton will make a statement.

Act. Chrmn. **AITCHISON.** Very well:

787 Mr. **HORTON.** My name is H. D. Horton. I am chairman of the Board of Associated Transport, Inc., and president of Horton Motor Lines. My company has been growing substantially and steadily for a number of years, and in 1940 I found that my company's position was reaching a very dangerous stage. To meet the requirements placed upon it by the shipping public would require increased amounts of money each year for the purchase of equipment and the other things necessary to successfully prosecute our kind of business. My own personal position as the sole owner of Horton Motor Lines was also becoming more critical. I found myself in the position that in the event of my disability or death, since I was running practically a one-man company, that there would be no one to carry on successfully the affairs of my company, and in the event of my death the demands for inheritance taxes would be so great that it would be impossible for my company to meet them, and it would be faced with a necessity of a forced sale to any possible purchaser or the liquidation of the company. That situation I did not relish because within the company, since I had been pouring back into it in all the years of its growth all of the profits beyond the requirements for ordinary living, I had no outside moneys with which to meet any such demands, and any demand for estate or inheritance taxes would have had to be met by that property. I knew that about  
788 the same position—many of the heads of other companies in the east with whom I had been familiar for many years, were about in the same position because all of our businesses had been expanding steadily and fairly substantially.

In 1940, I concluded a contract for the sale of my company to The Transport Company on the basis of receiving 80 percent cash and 20 percent in stock. The 80 percent cash would have been sufficient to produce the security and safety for my wife and children that I wished to produce, and I agreed to go along and aid in the management of The Transport Company, and, while the application of Transport Company was pending before this Commission, I studied methods of producing economies in that operation and in improving the service of it for many weeks. Late in 1940 the Transport application was denied, and in reviewing my own affairs I found that my company's position and my personal position was even in a more precarious or dangerous position than it had been earlier. To meet the requirements of

the trade I knew that there were only four places at which to get money.

First, our profits. Our company had been built out of the profits of our company, all of them being ploughed back into the company, but sharply increasing costs and sharply increasing taxes made further demands on those profits impossible for profits to supply any more than a small amount of the increased

789 equipment and facilities necessary to continue to successfully prosecute our business; so we couldn't hope to get the moneys necessary to meet the demands of the shipping public out of profits. The remaining three places from which it could be had were bank loans, financing companies, and from the public. As to bank loans, I knew from previous experience in times of depression that bank loans can be disadvantageous and substantially dangerous in terms of decreased or vanishing profits or decreasing revenues. The same thing in part was true with the purchase of equipment through finance companies. They also had fixed due dates, so-called, possibly extending over a longer period of time. My company, I knew, was not large enough to go to the public with its securities, for two reasons:

First, it was not large enough in volume of business, and that it was a one-man company, and the investing public in general would not be interested. I felt, in investing in a one-man company. About that time the decision of the Transport case came out and seemed to me to point the way to accomplish the very things I wanted to, that I had been trying to do. After studying that very closely I decided to try to effect a coordination of a smaller number of companies. At that time I went to see Mr. Seymour, because in time I had come to realize that Mr. Seymour was a man of very fine experience, fair minded, and a man in whom I had a great deal of confidence.

Act. CHRM. AITCHISON. Who is Mr. Seymour?

790 Mr. HORRAN. I beg your pardon?

Act. CHRM. AITCHISON. Who is Mr. Seymour?

Mr. HORRAN. Mr. Seymour is presently the president of Associated Transport Company. Mr. Seymour saw the picture very much as I did and also realized from his many talks with the heads of other companies in the old Transport deal that many of the heads, such as Mr. Barnwell and Mr. Arbour and Mr. McCarthy, were in about the same position that I was in. Practically all of the trucking companies have been built, gentlemen, in the last several years, not out of invested money from the outside, but out of the profits of those companies being ploughed back into them.

Commr. SPLAWN. Before Mr. Seymour became president of this company what was his connection?

Mr. HORTON. Mr. Seymour was president of Transport Company.

Commr. SPLAWN. And what was he before that? Is he a financier or an operator of trucks?

Mr. HORTON. He was the owner of a company that leases trucks in New York. He is the owner of a company—a large taxicab company in New York and a part owner in an insurance company in New York. All of those connections I was thoroughly familiar with, and I know as well his other associates in all of those other companies.

Commr. ALLDREDGE. Is your business a corporation?

791 Mr. HORTON. Yes; Horton Motor—

Commr. ALLDREDGE. And in what state is it incorporated?

Mr. HORTON. Horton Motor Lines, sir, is incorporated in North Carolina. After this talk with Mr. Seymour we called on the heads of various companies that I felt would be in the same position, or approximately the same position, that I was in, and who I thought fitted well into the kind of picture that I saw as being the proper kind of set-up that we were going to hope to put together, the proper kind of set-up as to the types of companies and the types of service they performed. The territorial coverages offered both end-to-end services and overlapping services. After many months of conferences in Mr. Seymour's offices we found a company into which these companies could be merged. I found that many of these companies would not sacrifice the goodwill and reputation of their company by having them merged into Horton Motor Lines, nor would I like to incur the danger of having my own company subordinated to the Barnwell or Moran Company or the McCarthy or these other companies.

Commr. SPLAWN. Now, isn't it the proposal for each of these companies, such as your company, to continue to be an operating company and merely be owned by this new company?

792 Mr. HORTON. No; not at all, sir. We proposed to put them into one single integrated company just as soon as we could do so, because only in that manner do we feel we can produce the economies that we feel we must have to protect our future.

Commr. SPLAWN. You propose to exchange the stock of your company?

Mr. HORTON. No. I am not proposing to exchange a thing. I am proposing to sell my stock to a company that I feel will be a more stable company than I am.

Commr. ALLDREDGE. What position will you occupy with the new company?

Mr. HORTON. Chairman of the Board.

Commr. SPLAWN. And this stock will be listed on some stock exchange and sold to the general public?

Mr. HORTON. As is contemplated, we are asking for permission to sell 15,000 shares of \$100 par convertible stock to the public for working capital, but it is not contemplated that it be listed on any stock exchange.

Commr. SPLAWN. Through what agency would it be offered to the public?

Mr. HORTON. I should say, sir, through whatever agency offered the best arrangements for us. We have no arrangement for that or understanding for that.

Commr. SPLAWN. Is any of this preferred stock going to be offered?

Mr. HORTON. At least 15,000 shares of this stock of the 52,000 shares.

793 Commr. SPLAWN. How about the common stock?

Mr. HORTON. It is not contemplated that any of the common will be offered, sir. During all of these conferences we have had I would like to say to you, sir, that there have been no outside influences of any sort, and I have particular reference in that case to Kuhn, Loeb Company since they have been so frequently mentioned in this case. Kuhn, Loeb Company were never considered, never contacted until we were far along in putting this thing together, and our only contact with Kuhn, Loeb was because we knew they were owners of Transport Company. The Transport Company had an option to purchase Arrow Carrier Corporation, a property which we wished to include. I can say further that we had very considerable trouble in our negotiations with Kuhn, Loeb. They seemed to feel that they were entitled to a special treatment different from that accorded the seven other companies. We did not feel so, but after the seven companies simultaneously signed a contract on June 11, we did continue in our negotiations with Kuhn, Loeb, which finally resulted in them agreeing to put the Arrow Carrier Corporation into Transport on exactly the same basis that everybody else had agreed to come in on.

In these several months of conferences, we developed a contract which we feel is a very fair and impartial contract. In the present Transport Company the set-up is; myself as

794 Chairman of the Board; Mr. B. M. Seymour, president;

Mr. Everett Arbour, Chairman of the Board of Consolidated Motor Lines, is the vice president; and Mr. John J. McCarthy, Chairman of the Board of McCarthy Freight System, is secretary; Mr. R. W. Barnwell, now president of Barnwell

Brothers, is on the Board of Directors; Mr. Cliff Brock, president of the Southeastern, is on the Board of Directors; Mr. J. P. Altwater, executive vice president of the M. Moran Transportation Lines, Inc., is on the Board of Directors; Mr. Wiley Moore, owner of Transportation, Inc., is on the Board of Directors. The eighth man and the only man on the Board of Directors who is not the head of one of these operating companies is Mr. James Arnold, a member of the firm of Kuhn, Loeb, and it was well understood that when Mr. Arnold was elected for a short term to the Board of Directors, in the event that he did not resume that position, that Mr. Arnold would be replaced by Mr. Jack Acherman, the majority owner and president of Arrow Carrier Corporation.

We found up to along in the middle of the year we had been going along in all of these meetings sustaining out of our own pockets the expenses, but we found that audits were going to be necessary, additional traveling expense, the expense of prosecuting the case before this Commission, and we decided that we should have some expense fund to make equitable and fair the moneys that we were spending, and we decided in that 795 case to do that, and the best method we could follow to do that was to sell in the same proportion to each person, to the head of each company, an amount of \$1 common stock, and his holdings would be if and when the deal were put together in common stock. In other words, the auditors made the computations as to what our expected holdings would be in common stock in Associated Transport if and when put together; and I agreed to buy and did buy for cash and paid for approximately 12,000 shares of \$1 common stock. The head of each company did identically the same thing in the same proportion that I did. Not the same amount of stock, but in the same proportion of our eventual holdings. We felt that this money going into Associated Transport would be lost money in the event we did not get an affirmative decision from this Commission, and we wished to participate in the proper proportions. We did that. At the same time, after these many months of negotiations, we found that we needed a person of broad and deliberate judgment, of sound business ideas, to act more or less as an umpire, because, after all, we were seven rather vigorous heads of trucking companies and we had many disputes and arguments, and we were trying to arrive at the successful method of putting Associated Transport together, and we were all convinced that we needed more than ever Mr. Burge, Seymour. We convinced Mr. Seymour that there would be an attractive and interesting future and very profitable

796 future in the position for him and us if we could get him to stay with us in the future, and as a part of doing that we influenced Mr. Seymour to buy 31,240 shares of the \$1 common stock of the company, which is the amount that we ourselves bought, and to pay for it, so that he would have some monetary interest, some proprietary interest, in Associated Transport when it was put together.

You understand, gentlemen, that Mr. Seymour had no company to turn into this and would receive no sum from Associated Transport, and unless we required that he do this, he would have no ownership of any nature and be only an employee of Associated Transport. But the man was entirely too valuable as a good, sound business man, as a man who had made a very fine study of the possibilities of consolidation. I know this because I conferred with him for many weeks, and I had and still have a very fine respect for Mr. Seymour's ability to do a good job in our company, and he is the kind of man with whom I hope to be associated in future years, as are the heads of all of these other companies. We did, however, place restrictions on our own stock, and we placed restrictions on Mr. Seymour's stock. On our own stock it is not possible to transfer that stock to the public. It is transferrable only one time, and that is it is transferrable only to the key people in my corporation, so that they shall have some stock and ownership in Associated Transport.

797 In Mr. Seymour's case, we did not want him under any forced pressure or for any reason to dispose of that stock for any considerable period of time, and we have restricted it so that he cannot sell it to anybody for thirty months. It is our feeling that if Mr. Seymour stays with this company as its president and works with the heads of these companies on the Board of Directors for thirty months, that he will continue to stay with it for many years, and we certainly do hope that he will.

During this time we were using the records of The Transport Company, and about this time we were challenged as to our right to use those records. We countered by saying that certain of these records were public properties, since they had been filed with the Interstate Commerce Commission, but we found when we went into the matter more thoroughly that that was not true. The audits in The Transport case went as far back as 1932, and we had been using those audits and the studies in our attempt to put together the proper group of the companies to provide the strongest and most able service organization that we were able to organize. Our attorneys advised us that there was a responsibility on our part for the use of these records, and we entered into an agreement with The Transport Company for the

use of those records, and, after much bargaining and bickering, we finally arrived at a basis for the outright purchase of those records. We did not have too much money in the treasury because we did not put in too much in the beginning; so we agreed to convey to The Transport Company 9,000 shares of the \$1 common stock in exchange for the audits and studies made of the Transport deal, and we now have that in our possession.

In checking with the auditors who do that type of work, they advised us that it would cost us 50, 75, or 100,000 dollars possibly to duplicate the records that it was possible for us to buy from The Transport Company, and we were very anxious indeed—and felt we were keeping money in our treasury—to make this kind of a deal. We wished to produce a stock that we thought would be sufficiently sound so that, in the event that inheritance taxes in the future should come, there would not be any great difficulty or too great a sacrifice on the part of the heirs in finding a market for this stock. The reason I mentioned death and disability was that three or four months ago my doctor told me that I had two years to live. Well, I immediately put my affairs in order. I found out later, by consultation with other doctors, that he had made a mistake; but it started me thinking along the lines of what would happen to my wife and children when I was gone. So, I wished and insisted on the stock being very sound and solid. We wished to come to the Commission with a stock that was supported by more true net worth than the capital issues that we proposed to offer, and we are doing that today.

799 Every one of the heads of the companies that we proposed to take into Associated Transport expect to stay with Transport from now on. There is not the slightest vestige of sell-out in this deal. I wish to make that very clear, gentlemen. That is very important. I at this moment will say to you that in the building of my business I have a substantial business, and it is a fairly good profit earner, and yet at this moment I have a mortgage on my home and I have money borrowed on my life insurance simply because I can't take it out of the business. When this time comes and this 15,000 shares is sold to the public, I propose only to sell enough stock to make my home debt-free and pay my insurance and have a couple of hundred dollars in the bank. I never have had any money in the bank. And when I say "a couple of hundred dollars" I mean a couple of hundred dollars; I don't mean a couple hundred thousand.

This group of people is very able and willing to put this company together just as quickly as this Commission may require. If you require that we integrate these companies, we transfer all

the assets and liabilities and operating rights within twenty-four hours, we will do everything human to do it in twenty-four hours. We ask you to give us sufficient time so that we don't suffer unnecessary loss in transferring license tags and to give us time to get out from under warehouse leases and such things. We know we can put it together completely and have it as a single integrated operating system within a year, and I personally believe that it can be done in some time less than a year; but I am positive that within a year the job can be a hundred per cent done.

I am going to touch upon competition of the companies only having relation to that part of the territory from New York into the south, because that is the territory with which I am most familiar. I am deliberately passing over some of the things that we wish to say concerning the financial setup of the company because Mr. Seymour will follow me and will go into more details as to that, and Mr. Everett Arbour, chairman of the Board of Consolidated Company and vice president of Associated, will follow him with the remaining explanation of the competition in the territory north of Washington. I am more familiar than anyone else, except Mr. Arnold and Mr. Brock, with the territory south of Washington; so I propose to state to you gentlemen that, as the Commission has found and as I have known for many years, there is not the slightest question of doubt as to the remaining competition in the territory I serve performing every type of service and operations. I know that in the last two or three years those carriers have been growing as fast as I have been growing. I know one carrier in particular two years ago had two or three trucks and now he has twenty or thirty. I know that because he took a good amount of business away, the R. J. Reynolds Tobacco Company.

800 Many of the other companies, Akers and Hudson, Miller Motor Lines, Mason and Dixon—all of those carriers who have been operating for a long time, large carriers, class 1 carriers, have grown and are continuing to perform a service, in the case of Akers Motor Lines, from Atlanta into Boston in a direct service. In talking with Mr. Akers, as he testified in the case here, he is not at all concerned about this Transport application. He does not believe that it is going to affect him, except under the theory that some of our shippers wish to have more than one carrier hauling their freight. He says he is now operating from Atlanta directly into New England. I don't have that right, but we are trying to get it consolidating Consolidated Motor Lines and Horton's operation in this Transport deal. Horton Motor Lines compete primarily—not primarily, but does compete in the

same general area with Barnwell Brothers Company. Barnwell Brothers Company is almost wholly an operation between New York and Philadelphia and the Carolinas. Horton Motor Lines, while operating over the same general routes, is quite a different operator. We do have some business that is competitive with Barnwell Brothers, but by and large our operation is equally divided between long haul, medium haul, and short haul business, and that has proven to me to be a very sound method of putting together a trucking company. We have a large share of business

801 between New York, Baltimore, Philadelphia, and Washington; between Washington, Baltimore, Richmond, and between Richmond, Washington, and Greensboro; between Richmond and the Carolina points; between Durham and Winston-Salem and Greensboro down to South Carolina. We also have intermediate haul distances as far as from Scranton to Greensboro; from Scranton to Charlotte; from Baltimore to Greenville, distances of 500 miles, and we have some operations longer than Barnwell's operation, which would be from New York to Atlanta. But in that operation we have several competitors, such as Brooks Transportation, Davidson, York Motor Express, East Coast Freight Lines, Atlantic States Express, Harris Brothers, Roadway Express, Motor Transit, Lewis and Holmes, Great Southern Trucking Company, New South Express, Freidman's Motor Service, Horlacher Delivery, Richards Motor Freight, Branch Motor Express, Kirby and Kirby, Middlesex Transportation, Shein's Express, Pyramid Motor Freight, and literally hundreds of others.

I think there are some two hundred Class 1 carriers within that territory. You probably have heard it said that there is no competition between trucks and railroads. I would like to disabuse your minds of that fact, gentlemen, because I suffered the agony of seeing some of my freight go to the railroads a year and a half ago. When the railroads cut 3,500 rates, I did not feel it was possible to meet a lot of those rates. We saw a lot of that 802 freight go to the rails, and it is still on the rails, and they perform the service we had been performing prior to that time.

In our territory we have a tremendous number of fleets presently moving freight that I originally moved or that Barnwell moved, so we have that type of competition, and we have very serious competition from the forwarder companies, so I know that with the thousands of trucks moving in exactly the same territory and performing exactly the same type of service in the territory which I serve, generally from Atlanta to New York—all that eliminates any possible thought that there is not sufficient remaining competition.

COMM. LEE. There are probably a lot of other people down there who would like to go into the trucking business, too; aren't there?

MR. HORTON. I beg your pardon?

COMM. LEE. There are probably a lot of other people down there who would like to go into the trucking business, if there was necessity for it?

MR. HORTON. Well, they have been going in, sir. There are many, many more carriers down in that territory than there were in 1935, five times as many; Heaven only knows where they come from, but they are there; and in number of vehicles, there are fifteen or twenty times the number of trucks in that service as there were in 1935 or 1936. There are twice as many as  
803 there were two years ago. Thank you very much, gentlemen.

ACT. CHRMN. AITCHISON. Whom do we hear next?

MR. SULLIVAN. Mr. Seymour is going to speak.

ACT. CHRMN. AITCHISON. Will you be kind enough to give me a list of the gentlemen on your own side who are going to appear, and pass it up?

MR. SULLIVAN. Yes.

ACT. CHRMN. AITCHISON. Thank you.

804 Argument of Mr. B. M. SEYMOUR:

MR. SEYMOUR. My name is B. M. Seymour, president of the applicant company.

It was in the latter part of 1940 that I had many visits from many of the operators who are involved in the present application. All of them were interested in knowing whether there was any way that it would be possible for them to get together in some kind of a cooperative effort to make possible the security which Mr. Horton has spoken of, to make it possible to redistribute the risk which is inherent in this business and, more important, to make possible the effecting of substantial economies which certainly seem to be necessary, in view of the ever-mounting costs of doing business.

In the talks that I had with all of the men whose companies are involved in this application, my advice to them was to wait until the opinion on The Transport application was released and we had a chance to find out the views of the Commission. We had certainly a hope that in the opinion there would be a rather clear path outlined in so far as working out some plan which would permit of a cooperative effort such as we feel we have now submitted to the Commission.

I certainly want to say that in working out the contract as between the eight companies, that it was a very difficult kind of

a contract to work out. It must be borne in mind that in the case of each of the properties—in the case of Mr. Horton and Mr. Barnwell and the Consolidated and the McCarthy, they were businesses which had been built up—they were all really bootstrap operations. They had all been developed out of the earnings of the business; all of the men were very rugged individualists, and it was really quite difficult to get eight men to see eye to eye because it was necessary that we carry on a great deal and prolonged negotiations to find a basis of equality, in so far as the value of each individual's property was concerned. So I say that we probably selected the most difficult kind of a formula to bring about this consolidation of companies, because what it amounted to in substance was that each property had to be put into a common pool, and that meant that each owner of a company must satisfy himself and be sure that over a period of years to come that he was going to be able to get along on a friendly basis with the other men who owned the business jointly with him, and I assure you gentlemen that that is a very hard way to bring about a merger of properties.

In submitting the application to the Commission, I think that, briefly stated, I can say that the application is conspicuous by the fact, first, that it represents a hundred per cent exchange of stock and that, in addition to that, certainly the owners are going to remain in control of the property.

806 We have previously stated either in our brief or in the reply to exceptions that, in so far as we are concerned, we are perfectly willing, if the application be approved, that the Commission may order or may suggest that the present owners of the constituent properties shall remain in control of Associated Transport. That is the intention of all of the men who own the properties that are in the application, and we are perfectly willing and happy that that be a condition of the order.

The preferred stock was finally—or it is contemplated that it shall be issued on the basis of 80 percent of the net worth, and when I say "net worth" I mean the net worth as reflected in the report submitted to the Commission—and, incidentally, that net worth, after the audit was reduced, I think, in the aggregate will be some \$175,000, and that net worth is without any equipment appraisals, without any real estate appraisals, and after disregarding all intangibles. The common stock arbitrarily was set up on a basis of issuing one share of common stock for each \$2 of earnings as of the twelve months ending on April 30, 1941. The only reason we used that formula was that it produced what we thought was just about the right number of common shares. There was no other reason for it. We could have had twice as

many common shares just as easily. The other features of the application, or the contract between the companies, are that we have produced, certainly, a conservative capital structure.

807 The preferred stock and the common stock represent a total of four million—roughly, four and a half million dollars, and that compares to a net worth of \$4,900,000 as of April the 30th, or leaving a surplus net worth of \$472,000. That is on the basis of both the common and the preferred stock, because it is proposed that the common stock will be charged on the books at a dollar a share. The net worth remaining as of April 30 over the preferred is \$1,177,000, and that does not take into account the earnings which will have accumulated from April 30th of last year up until the time Associated is put together, if the application be approved.

Commr. ALLDREDGE. May I seek a little information on that point? Are all of these companies common carriers?

Mr. SEYMOUR. All with the exception of four.

Commr. ALLDREDGE. Well, has the Commission determined their operating rights and issued certificates to them, or is there anything remaining to be determined about that?

Mr. SEYMOUR. Well, Mr. Commissioner, I think substantially all of the certificates are final. There is a question as to some of the rights in connection with Southeastern. I know that in the case of Consolidated they have received their certificated rights, and I am sure that generally that is so as to the balance of the carrier companies, with the exception that I mentioned.

Commr. ALLDREDGE. You do not recall whether the cer-  
808 tificates have all been issued or not?

Mr. SEYMOUR. Well, I can—

Mr. SULLIVAN. In all cases the certificates themselves have not been issued. I think, however, in all cases where the certificates have not been issued, except Southeastern, they have been through the Division, and at least the rights authorized by the certificate division, as long as two and two and a half years ago. Some of the decisions in some of the cases have not come up yet.

Commr. ALLDREDGE. What I am coming to is this: It is probable, isn't it, that there is some adverse interest represented in these cases involving certificates and that they have not yet been determined? If you get together you will withdraw all opposition, I suppose, and those cases will cease to be prosecuted; is that right?

Mr. SEYMOUR. Well, I don't know what the answer to that would be, Mr. Commissioner.

Mr. SULLIVAN. I can only say to you, sir, that I don't know in checking over the certificate situations when this was being put together, I know of no case where there was controversy between the parties here or one was protesting another.

Commr. ALDREDGE. Mr. Horton's Line has been in cases here resisting the granting of authority to competing lines. I was just wondering whether there is some of that opposition  
809 still remaining among the carriers here.

Mr. SULLIVAN. So far as I know, Mr. Horton does not, but I would be glad to file a statement on that.

Commr. ALDREDGE. Do I understand that you only have what is called a compliance order?

Mr. SULLIVAN. Oh, no, sir.

Commr. ALDREDGE. And you have certificates, then?

Mr. SULLIVAN. I don't think it quite happens that way. I will give you an example. The M. Moran Transportation Line had a formal hearing in 1936. Exceptions were taken to the Examiner's report. There were hearings in 1937 before the Division: Mr. Eastman, Mr. Lee, and, I think, Mr. Mahaffie sat. A year later the Division affirmed and adopted the Examiner's report. That was in 1938. This is 1942 and nothing yet has happened in the way of a certificate, although there is nothing formal pending before the Commission. As to their necessity and compliance orders, which were only recommended by the field men, almost everybody has been through formal cases or had a formal situation like that, and it is only a clerical proposition. I assume the certificates themselves have not been handed out.

Commr. ALDREDGE. Well, you mean Division V has issued reports and orders finding you entitled to certificates and the certificates have not actually been issued; is that right?

810 Mr. SULLIVAN. I can speak for the Moran case. That happened in 1937. We argued it before the Division in 1938, I think, then these came out and, as I say, this is 1942. There were no appeals taken from their exceptions, and this is 1942, so I assume it is a carrier—

Commr. ALDREDGE. Don't those orders have a provision that if notices of appeal are filed within any certain time, that the matters are then held in abeyance until the issues are finally determined?

Mr. SULLIVAN. Yes; but in the case I speak of the only appeals that there ever were were after they filed exceptions, and somebody opened the matter, and the Division issued another formal order denying that.

Commr. ALDREDGE. I am just seeking information as to whether or not all of these rights have been finally determined, and there is nothing left to be done in that respect.

Mr. SULLIVAN. The situation, I think, is as I explained it to you.

Mr. SEYMOUR. In that connection, Mr. Commissioner, if the application be approved, out of the 36,000 miles of rights that the

companies have in total, something over 13,000 would be surrendered, about a third. There is that amount of duplication of rights.

811 **COMMR. ALLDREDGE.** Pardon me. If it was simply a clerical matter, I don't understand why you did not have certificates issued to you so that that matter would be cleared up.

**MR. SULLIVAN.** I am sorry, sir. It is my understanding that the actual issuance of the certificate was an administrative matter, that our rights were established by the order. The order itself of the Division is in detail and undoubtedly reads exactly the same as the certificates would read when it came out.

**COMMR. ALLDREDGE.** Suppose the Commission approves your application. Is that going to foreclose the determination of controverted issues?

**MR. SEYMOUR.** As between these companies involved?

**COMMR. ALLDREDGE.** As between these companies.

**MR. SEYMOUR.** I know of no issue as between these companies.

**COMMR. ALLDREDGE.** You do not think there are any issues in these cases involving the issuance of certificates to the companies involving any company?

**MR. SULLIVAN.** And, sir; I don't mean to talk two at once. The reason we did not go into that and have it cleared up before we came in here was because of the practice of the Commission that the Commission does not consider in a section Five case an acquisition proceeding, does not consider the status of operating rights to the degree we are dealing with it here, and we did not deal with it.

812 **COMMR. ALLDREDGE.** That is what I thought, so there would still be questions to be determined?

**MR. SULLIVAN.** I would not be able to answer that.

**COMMR. PATTERSON.** Are there any contract carriers among these?

**MR. SEYMOUR.** No. There are only three non-carrier companies. Two of them are real estate companies that own terminals. The other one is an equipment company owned by Mr. Horton, and the other is a sales company which would be discontinued if the application be approved.

**ACT. CHRMN. AITCHISON.** Well, I guess you can continue with your argument.

**MR. SEYMOUR.** Going on from that point, why, we did endeavor, and we are very sure that we have succeeded in taking out of their contract as between the companies and in the application as submitted to the Commission, all matters that we feel could in any wise be objectionable, based upon the opinion in The Transport case. There are no employment contracts and certainly there are

no bankers, and there are no promoters, even though I have been referred to as a promoter. I am not a promoter. I am an operator. I never even knew a banker until two years ago, never even had met one. At this point, in connection with competition or remaining competition, I would like to make this rather quick observation, in addition to the statements made by Mr. Horton: In

1940, which is the only year that we have information from 813 the Commission as to the volume of business, as to the amount of freight carried by motor trucks by companies under the jurisdiction of the Commission, using that year as a comparison, we find that these companies, which, in 1940 did \$18,000,000, that would be as against \$373,000,000 done by other companies handling freight by motor trucks up and down the Atlantic seaboard. In other comparisons, on the basis of units involved in this application, these companies own 3,200 units. That compares to 600,000 in the United States. Perhaps, arbitrarily, we could allocate a quarter of them to the Atlantic seaboard.

Commr. MAHAFFIE. Where do you get that 600,000 in the United States?

Mr. SEYMOUR. That information has been gathered from reports to the Commission. I meant trucks under the Commission's jurisdiction.

Commr. MAHAFFIE. That generally exceeds the number of valid plates outstanding; doesn't it?

Mr. SEYMOUR. This information came from a statistical study, Mr. Commissioner, that originated in the Commission. I think maybe we can find that.

Commr. MAHAFFIE. It may be right. I just wondered how it came to be so greatly in excess of the number of valid plates reported as outstanding. There may be some explanation. I don't know.

814 Mr. SEYMOUR. On the subject of labor, I would like to read this statement: "Labor through the Teamsters Union presently represents 80 to 85 percent of the total employees of the companies in the proposed unification. We intend, if this application is approved, to enter into contracts with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America looking to the perpetuation of peaceful relationships between Associated Transport and its employees, to the end of providing uninterrupted service to the shipping public. This contract will include appropriate and reasonable provisions covering discharges, severance compensation, transfer expenses, and the like, for the purpose of alleviating hardships to employees that may result from the Associated Transports' acquisition of the assets and its assumption of the liabilities and obligations of the component companies of the merger."

Commr. MAHAFFIE. Did you state that you have entered into that contract?

Mr. SEYMOUR. No. In the opinion in connection with The Transport case, it was stated that it was not considered that it would be in the public interest if several truck leasing companies were included, had the application been approved. In that application were three truck leasing companies, one of which I have a financial interest in. My interest and that of my family 815 is roughly 15 percent. The control of the company is with

Mr. Leon Greenbaum and his family. I certainly can say to you that the metropolitan distributors are not going to lend themselves to any plan that would further the interest of any unrelated over-the-road trucking company. On the basis of what we feel are the merits of the application we certainly hope that it will be approved as soon as possible.

Commr. SPLAWN. The report of the Examiner contains all the benefits—his statement of benefits are the benefits of this proposal as you see them? Or have you any to add that he did not mention?

Mr. SEYMOUR. Well, I had several notes, Mr. Commissioner. I can summarize them rather quickly.

Commr. SPLAWN. Well, I will not ask you to do that. I just want to know if you considered his statement of the benefits adequate and complete.

Mr. SEYMOUR. Yes. Yes; I do.

Commr. ALLDREDGE. Did I understand you wanted to say that if this consolidation is approved about a third of their authorized mileage will be abandoned?

Mr. SEYMOUR. Yes.

Commr. ALLDREDGE. Is anybody going to explain that, where it occurs, and show us in an aggregate way how to appraise it?

Mr. SEYMOUR. Well, I am familiar with only the very bare fact that as a result of a study that was made—and I will 816 make an inquiry as to whether the details are here—that—

Commr. ALLDREDGE. You have no map illustrating it?

Mr. SEYMOUR. I don't know that one is presently available.

Commr. PATTERSON. When you get through will there be any fewer trucks on this mileage than there is now?

Mr. SEYMOUR. There will not be fewer trucks, but the present number of trucks, in our very considered opinion, will be able to carry something between 20 and 25 percent more freight than they carry now.

Commr. PATTERSON. And you will not abandon any mileage; you will just abandon some duplication of rights?

Mr. SEYMOUR. We will abandon duplication of rights; yes. The matter of economies has been covered in the Examiner's report, and a great deal of time—

Commr. ALLDREDGE. I misunderstood you. I thought you abandoned road mileage.

Mr. SEYMOUR. Duplicating rights.

Commr. ALLDREDGE. You simply abandoned duplicating rights?

Mr. SEYMOUR. Yes.

Commr. ALLDREDGE. No road mileage?

Mr. SEYMOUR. Oh, no. No.

Commr. SPLAWN. The record is complete as to the obligation of these existing companies and how they will be handled and how you expect to raise money for the future?

817 Mr. SEYMOUR. We have no intention of raising money other than through the hope for approval of being permitted to sell 15,000 shares of preferred stock.

Commr. ALLDREDGE. Well, as I understood Mr. Horton, he felt one of the advantages, from the point of view of his operation, would be a broader base on which to appeal to the investing public. The present situation, financially, of small operating—a relatively small operating company, as I gathered, he considered is more or less precarious. Now, just how are you going to get the money in the future as it may be needed? By selling more preferred stock? By issuing bonds?

Mr. SEYMOUR. You mean on the assumption that we were successful in raising a million and a half?

Commr. SPLAWN. Yes.

Mr. SEYMOUR. Frankly, Mr. Commissioner, we frankly and very honestly don't believe that that need will arise after the million and a half.

Commr. SPLAWN. You will be more fortunate than most combinations in financial history that we have had occasion to review if no need for further finances arises; will you not?

Mr. SEYMOUR. Well, I realize that it may be very difficult for any one to believe that there is the opportunity for economies that there is in this business. We have testified during the hearing that we would save by reduction in expense by the  
818 elimination of duplication of facilities an amount of some \$1,300,000 after taxes. I know that that looks as being rather fantastic. The truth of the matter is that we think it is decidedly conservative because, in addition to that, we believe that through increased efficiencies we can add to earnings an amount equivalent to that which we can save in direct expenses.

Commr. SPLAWN. If that pans out as you expect—let us assume for the moment that it will—will your company be contented with its present set-up; or will there be any new vistas and new opportunities to exchange stock for stock of other companies and expansions in different directions, and, if so, how will those things be—

Mr. SEYMOUR. I can answer that question, Mr. Commissioner, because it has been the subject of many conversations between us. There are two reasons why there are no ambitions beyond the present merger of these companies here involved:

First, because it is a little bit difficult to find men who are willing to take potluck as these men are; and,

Secondly, we feel that from here on that we are willing to grow with the industry. We are only interested—we have all the territorial coverage in these companies that is necessary to render a good and an adequate service to the public.

Commr. SPLAWN. The economies in operations, this million-odd cost you expect to save, is largely due to the elimination  
819 of this end-to-end overlapping where these companies meet in competition?

Mr. SEYMOUR. It comes in many sections, all items of expense. It happens that I have had conversations with insurance companies. I don't know why I should be a better buyer of insurance than any one else, but had the Associated Transport been in existence in 1941, our insurance would have cost the company \$275,000 less than they paid. That is on the basis of a proposal which a large—as a matter of fact, one or two large companies are willing to make, because they feel that a company of this size will do a much better safety job; that claims will be settled more quickly in cooperation with insurance companies' claim department, and they just feel that a setup which is going to be managed by nine good practical truckmen is going to produce a better result from a risk standpoint than with any one of the companies individually.

Commr. SPLAWN. That was due to the elimination of some units and the prospect of getting all the business, getting a big contract?

Mr. SEYMOUR. Oh; I think perhaps, Mr. Commissioner, that may have been a consideration to the carrier. They did not admit it to me, but that may very well have been so. In going down the line—and these projections of economies are matters that have been considered by all of us. I mean,  
820 over a period of many weeks, days and days were devoted to it because, if I may use this slang, we certainly did not want to kid ourselves, and moving into sales, tariffs, and advertising, we have projected a saving of \$150,000 because obviously we could not go ahead and have the same number of solicitors calling on shippers as call on shippers as representing the individual companies. We could not have eight solicitors calling on one shipper for one company; and looking on down into maintenance, I can say only this in connection with maintenance; that there are even in this company—and these are of the better car-

riers—there are companies who conduct maintenance on the basis of—I don't know what you would call it; a sort of a hammer and tong operation. There seems to be no—certainly there is no periodical inspection. Certainly there is no scientific approach to maintenance. Yet, there are several others that really do a very wonderful job of maintenance, and certainly we are going to take the standard of the poor ones up to the standard of the good ones. We certainly are not going to take the standard of the good ones down to the poor ones.

Commr. SPLAWN. When you consider all the salaries and your divisional organization, regional organization, whatever will be necessary under this new set-up, you find that the total overhead adds up less than the aggregate of the overhead of these eight companies?

821 Mr. SEYMOUR. We have very carefully budgeted the expense of the so-called general office. All of the personnel that we will have—and it will be primarily limited to that of the setup to look after the control of the business—will be taken from the organization of the constituent companies, and we have set ourselves to an expense in connection with the top office of \$175,000 a year.

Commr. SPLAWN. When Mr. Horton, Mr. Barnwell, and these men who built these companies go out after business personally, they have demonstrated they know how to get business. When they become general officers in this big organization and send out employees to contact the shippers, do you assume that these employees will be as effective as business getters as the men who built these eight companies?

Mr. SEYMOUR. Mr. Commissioner, the reason that Mr. Horton and these other gentlemen who have built this business up almost from nothing have succeeded is because they were working for a company which represented everything they have. The Associated Transport is likewise everything they have, and I think that the incentive is going to remain.

Commr. SPLAWN. Right there is where I wish you, as a financier, would tell us about the future plans for selling the stock of these companies. If these men come in and make this company a success in the next three or four years, would you anticipate—  
822 as Mr. Horton indicates, he is about ready to retire. These other gentlemen probably are, too. Is it contemplated that the stock will be widely sold sometime in the next few years?

Mr. SEYMOUR. Mr. Commissioner, Item No. 1:

We are perfectly willing that the Commission, either in an order or a suggestion, say to us that the control of this company shall remain in the hands of the present owners;

Secondly: These men aren't really very old. I mean they are relatively young, and, in addition to that, why, I am very certain, or I would want to have nothing to do with it—but these men are going to stay with this business until all of us are old men, and the only sale of stock that is contemplated is the sale of some stock to raise working capital, and the only protection and security that the individuals are interested in, is at least being the owner of stock if anything happens to them and if their families have to have something that they can pay taxes with, that they will have a stock that they can sell either to the group or to someone else. There is no public offering contemplated, and if there was, I assume that we would have to come, certainly, to the Commission.

Commr. ALDREDGE. Where will your general office be?

Mr. SEYMOUR. New York. There is one other thing in connection—

Commr. ALDREDGE. Is that a good place for an operating office?

823 Mr. SEYMOUR. Yes; I think it is probably about as central as any other place. We have no particular views as to where it should be. As far as we are concerned, we would just as soon it would be anywhere. In connection with the statement Mr. Horton brought up, and which is a matter of concern to all of the operators, in the event that anything happens to them because they are all pretty much the heads of one-man businesses, certainly under this setup management would be perpetuated. All of them are. And that, to a very great extent, alleviates much of the danger because at least their interest, they feel, is going to continue to be in good hands.

Act. Chmn. AITCHISON. Does that conclude your presentation, Mr. Seymour?

Mr. SEYMOUR. I just wanted to make this one other comment. Mr. Commissioner said as a financier, what were my views? I certainly am not a financier. Yes. Thank you.

Act. Chmn. AITCHISON. Mr. Arbour.

824

Argument of Mr. EVERETT J. ARBOUR:

Mr. ARBOUR. Mr. Chairman, and Gentlemen, my name is Everett J. Arbour, chairman of the Board of Consolidated Motor Lines, also vice president of The Associated Transport, the applicant in this proceeding. First, gentlemen; I would like to concur fully in the statements that have been made by the two previous speakers, Mr. Horton and Mr. Seymour, and particularly in the last statement that was made about we as the heads of the present company remaining in this Associated Transport.

If myself or my father, who happen to be the largest holders in Consolidated, thought for one moment that the present heads such as Jack McCarthy, Bob Barnwell, and Cliff Brock, had any idea that this was a sell-out whatsoever, I absolutely would not be interested.

Act. Chrmn. ARCHISON. I suppose somebody here later is going to debate the question as to whether or not we can properly condition our approval upon personnel or management, inasmuch as we all know that people die and die suddenly, or they exercise their rights as citizens and go into other employments or Uncle Sam comes along and puts them in a camp.

Mr. ARBOUR. Mr. Commissioner, I think you have brought about just what I am looking for. If something happened to me, I would feel a lot safer with my family with these seven men, whom I have known all my life, to protect the future  
825 interest of my family.

Act. Chrmn. ARCHISON. Eventually they will all pass away.

Mr. ARBOUR. Well, I think in that time we will be able to produce understudies, men who come along, men who know enough about it to take over those reins. However, gentlemen, my reason at this time is primarily to touch upon one subject that I think is of utmost importance and that I know quite thoroughly, being an operating man—practical operating man—that is my function—and that is one of competition.

There have been several reports made to Congress over a period of years that we had an oversupply of transportation in this company. I will agree that was up until now. However, in reference to remaining competition I want to concur wholly and say that the analysis of the competition up and down the Atlantic seaboard over which this combination would operate, as expressed by the Examiner's report between sheets 24 through 40, is one of the finest analyses of competition, and I certainly do not want to go into further detail, because I think that covers the subject pretty well with probably this added fact: That, in our analysis and studies from which this report was made, some of the facts and details were taken and we presented in our Exhibits in the New England area some 350 carriers; in the Middle Atlantic area  
826 some 350 more carriers, and in the southern area some 325 carriers. In addition to that, the files of the Commission were made a matter of record by stipulation, and I think,

to me, the most important factor was that there were shippers who testified throughout the case from all sections of the Atlantic seaboard, and all of them unanimously stated that there would remain such existing competition; that they were using that competition and that they would continue to use that competition, and,

as a practical operator, I can assure you that there is just that competition; and I want to further emphasize that, particularly along the industrial area of New England, that the rail—that I know the rail competition—and I know it is a fact in the other territories—is very, very strenuous competition, and the private carrier and the medium haul and short haul which my company is engaged in with the private carrier is a very, very potent factor. We also have the contract carriers and the forwarding companies which are very, very heavy competitors, and that I can state from actual experience operating in that territory.

Commr. ALLDREDGE. Is the forwarding company a competitor?

Mr. ARBOUR. Yes.

Commr. ALLDREDGE. It uses some motor carriers to perform its service. Does it use yours?

Mr. ARBOUR. No; we don't have any forwarding company business whatsoever, not a pound. Further, as a practical operating man, I look upon this consolidation as an end-to-end  
827 consolidation. While there is some overlapping, there are at least five companies, namely, Consolidated, Arrow, Horton, Southeastern Transportation, who have very, very little overlapping, practically none. Certainly there is no overlapping competition amongst those five. However, there is some overlapping competition in some of the areas. One of them is Consolidated, and also McCarthy. The McCarthy Freight system operates in the same territory as Consolidated does, but—

Commr. LEE. Where does Consolidated operate?

Mr. ARBOUR. Consolidated operates, roughly, in a triangle between Boston, Buffalo, and Philadelphia, and intermediate points. The McCarthy operations are in Massachusetts and Rhode Island. I think they have rights as far west as Albany. Their operation is quite different from Consolidated's operation. McCarthy is strictly a short-haul carrier. His operation in the great majority is in the eastern section of Massachusetts, short-haul points. He has no rights into New York City. On the other hand, Consolidated's operation is mainly in the four metropolitan areas, Philadelphia, Newark, New York, and Boston. McCarthy only operates in one of those metropolitan areas, that of Boston, and the predominance of his volume is from short-haul points, such as Rhode Island, eastern Massachusetts, central Massachusetts, in and out of Boston; while Consolidated's operation in and from

Boston is primarily—I don't mean primarily, but I mean  
828 in the majority—from Philadelphia, Newark, New York, lower Connecticut, western New York, into Boston, and our operation is mostly what we call medium-haul operation into those territories in which McCarthy does not operate. He is also very

strong in the eastern Massachusetts area, and Consolidated is comparatively weak in that territory, and I think that is true vice versa. As a matter of fact, I know it is true vice versa in Connecticut where Consolidated's home is and where they are exceedingly strong.

You have another overlapping in the Moran-Consolidated. Consolidated's operation does extend into New York State, but there again you have got a different operation between these two companies. Moran handles many, many peddle runs, peddle run operator, as we call them, in that territory. Forty-five percent of his total volume is intrastate business. On the other hand, Consolidated has very few peddle runs, and only twenty-five percent of that volume which originates in New York State is intrastate business, so there is not as much overlapping as there might look to be from the picture or a map and, particularly, so far as the type of operation, and, of course, Moran's rights are many times broader than Consolidated's in the State of New York. Insofar as Horton and Barnwell are concerned, I think Mr. Horton covered that pretty well.

There has been some fear expressed that a direct through  
829 service by the combined companies would present some motor competition. From a practical standpoint, I would like to go into that. In the first place, this company would handle what we in the truck industry refer to as three types of transportation, short-haul, medium-haul, and long-haul. In an analysis and study which I made, I find that these three types are about one-third each, so, therefore, the fear will consist essentially of only against one-third of the combined operations of the company.

Then, again, we have got a historical background for an argument. We have such systems operating in this country, true enough. None of them along the Atlantic seaboard, although there are some operators that operate from the south into New England, and substantially so today. There are east-west operations such as the Interstate System, the Spectre Motor Freight, Keeshin System, U. S. Truck Line System, and any number of others, and I know, as a matter of fact, as a practical operator, that the competition of those systems has not been impaired and has flourished and grown equally, and in many cases more so than these systems have traveling from east to west. I can go to something closer to home. My company is the result today of several consolidations, the last of which the Commission approved in 1937, and I can definitely state to you gentlemen that our competition—that allowed us to extend our operation, by the  
830 way, from New England into New York State, and from

New York into the Philadelphia area, and I can say that our competition has not been impaired. They have flourished; they have grown, just as substantially as the Consolidated Motor Lines has, and that is a matter of record. I can tell you that, from a practical standpoint.

There has been a further contention made that a lot of this interchange freight that we now give to connecting line carriers would be taken away to the detriment of these carriers. I think, gentlemen, that is not founded. That is founded on a fear which will not prove true, for this reason:

First of all, all of the freight that is being turned over to the companies in this combination by other interline carriers, it is only reasonable to believe, will be diverted to the other independent carriers, and I think you will find that the freight that might be turned over by these carriers to each other under the combination or go through direct will no more than offset that diversion from the independent to the independent. Furthermore, I again refer you to the testimony of the shippers. They very definitely are today and have been for a long time routing their freight. We all honor shipper routings. Much of this interchange freight is shipper routed, and in their statement here before the Examiner, they definitely stated that they are using these competing lines, will continue to use them because they will not place all  
831 their eggs in one basket, as several of them put it, so I think, gentlemen, from that fear of competition it will pretty well equal itself out.

Now, insofar as this interchange is concerned, it has many advantages. In the first place, it eliminates delays, and particularly in the New York gateway, where we make a tremendous interchange. At the present time the facilities in New York are terribly congested. I think I can better explain that by giving you a practical operation. Today we pick up freight going to points south, or Washington, Baltimore, and points south. That vehicle leaves New England that evening and arrives in New York some time between five and eight o'clock the next morning. We contact a connecting line carrier and try to make a time whereby it is convenient to both of us that we can interchange that freight, first, because we don't want to, as we call it in truckmen's language, float it if we can help—try to make an interchange from one body to another. Secondly, to make it so as when the vehicles do meet they won't be held up any too long. At best, that freight will not leave New York City until that evening, and between his unit and our unit that freight is delayed at least twelve hours. Under an operation under this combination I definitely am of the opinion, and I know, that that freight would not even go through New

York. We would route around New York; that the unit  
832 would go from one end to destination. Either the complete unit—

Commr. PATTERSON. What would be the longest haul you would give a given shipment?

Mr. ARBOUR. Well, a given shipment at the present time, I believe, that from Boston to, say, Atlanta, is probably as long as—I think Transportation has some rights in New Orleans, but they are not a practical operation.

Commr. PATTERSON. Well, as a practical truckman, what is the longest distance you do give a given shipment now to haul it economically by truck?

Mr. ARBOUR. Well, I believe at the present time, and from the studies that I have made of my competition, many of which are in the long-haul business, that I think today an eight- or nine-hundred-mile haul has been shown to be very profitable. Now, I think that has a lot to do, Mr. Commissioner, with the territory in which you are operating.

Commr. ALLDREDGE. You say "very profitable"?

Mr. ARBOUR. Yes.

Commr. ALLDREDGE. That has a lot to do with the rates under which they operate, too; doesn't it?

Mr. ARBOUR. Yes; naturally, the intake governs and, naturally, you get that from the rates. But the rates as a whole, Mr. Commissioner, would not be the same all over the country. I know that in the New England area we try to concentrate in and  
833 to the metropolitan areas from the Connecticut area around 120,175 miles, and in that area we find that that type haul is better. I know in New York State it extends for 300 miles where it is a better operation to operate nearer up there, whereas in Connecticut it is a better operation to operate one hundred miles. You get into the congested areas, traffic conditions are involved, and you get out in the wide open spaces—the best example of that is that I know that recently labor in one area was 3 cents, 3½ cents a mile. When you get into New England you pay 5½ cents and 6 cents a mile.

Commr. PATTERSON. Under this arrangement would the average haul increase or decrease?

Mr. ARBOUR. The average haul would be pretty much the same as it is now. The freight would not go in any different unit.

Commr. PATTERSON. You just stated it in a different way.

Mr. ARBOUR. But the pick up and delivery of the freight is exactly the same, although in practical operation instead of exchange at Philadelphia or Newark. We may start him from a southern location in New England rather than northern New

England as we do now to get as much of the haul out of him as we can because we can't go by New York. Under my statement, Mr. Commissioner, my idea was to route him around over the Washington Bridge and to New Jersey in order to get him away from the traffic at the Port of New York, which is terrific.

Commr. PATTERSON. These employees would then all be re-assigned?

Mr. ARBOUR. No; at the present time a man may be operating between Springfield and New York. His operation now might be Springfield and the Washington Bridge, where an exchange of power units would be made, and the fellow who has been handling from New York to Philadelphia would just exchange the power unit. Or they may exchange drivers completely and the power unit go along. I mean, so far as the human change is concerned, there would be very little of that, in my opinion.

Commr. SFLAWN. You classified these hauls as short, medium, and long. What is the average of the long haul, by and large?

Mr. ARBOUR. I would say the average of the long haul, by and large, in this is about 5 to 600 miles. Furthermore, there is a tremendous saving to be made in the elimination of rehandling; especially when you try to rehandle in congested terminal areas the damage is terrific, and the shortages, known to us as os. and d's, they amount to a terrific amount, and at this time when it is absolutely necessary to get as much out of every unit as you possibly can in order to meet the demands that are being made upon you today—and particularly from our area the extra twelve hours of production that we could get out of those units would be of tremendous help.

Commr. LEE. You do not interchange equipment now?  
835 I say, you do not interchange equipment now?

Mr. ARBOUR. We do on a very small scale. I have had much experience with interchange of equipment. As a matter of fact, before the Commission approved our consolidation in 1937 we interchanged bodies at New York with another line, and they took our body up and we took theirs, and the same thing happened at Albany, where the Simpson Lines, which we bought, were taking our bodies. My experience in the interchange of bodies has not been good. It has been far from good, and the only reason that I extended into Philadelphia and into New York State is because that did not work out from a practical operation. The best example of that is that in time we were hauling about two bodies a day from New England to Philadelphia. We were arriving at Philadelphia—I don't care how closely your sched-

ule—your trucks to meet at New York, they just don't meet, and this went for five years, so we gave it plenty of opportunity to work. Our vehicles were getting into Philadelphia at eleven or twelve o'clock the next morning. Our competition delivered their freight at 8, 9, and 10. Shortly after we got our rights to operate and we operated direct we increased from about 24 loads a week to 70 loads a week from New England into the Philadelphia area. The same identical procedure was carried on between New England and New York State west of Albany, and exactly the same situation occurred there. We corrected that by  
836 asking your permission to bless the consolidation of Simpson Transportation Lines, and it has been very beneficial, and our shipments have improved tremendously.

There are two other items that I think are worthy of note here, and I think that is maintenance and safety. Particularly as to the questions that were asked Mr. Seymour as to economies, our company is one of two in this combination which has had some semblance of preventive maintenance. We have gone into it quite extensively, I might say, just as far as we thought we could with our resources, but we are a long way from the goal we would like to reach with our maintenance. In the small way that we went into it we eliminated 35 percent of our road breakdowns. We got much more out of our vehicles because we cured them before they were sick, and we scheduled them into inspection stations at a time when we didn't need the power unit so as we would get as much production out of the unit as was possible. Under these plans I know that the Horton Lines also are pretty well under preventive maintenance, and outside of that I think I am safe in saying—I know that maintenance is just an ordinary repair job, and after the beast has been ill for quite a while it takes longer to cure him than if you stop it before it starts. That is the theory we have applied to it.

Now, if that were extended throughout this combination it would save a tremendous amount of unit time. I mean by  
837 that that we could utilize equipment much more than we are now. I would visualize, and my recommendation would be two or three central repair shops fully equipped completely so that units could be built at those areas and put in stock in the various locations so that quick changes could be made, and you would get practically 24 hours a day out of your units or close to it, and almost 365 days a year. We have increased the life of our units in our territory tremendously under this program. Also we could take advantage of any technological improvements. In our own setup we have dynamometer setups. The only other one I know of is Horton. In the last year we have made a saving

of some \$65,000 in gasoline. Then we are the only company in this organization who are self-insurers. We have had that for six years.

COMM. ALLDREDGE. Self-insurers?

MR. ARBOUR. That is right, to a certain extent, Mr. Commissioner. We carry the first \$10,000 and then reinsure from there on.

COMM. ALLDREDGE. Is that the way the Consolidated would save this very large amount?

MR. ARBOUR. In my opinion, you could do it that way, or one other way, Mr. Commissioner, because, since we have proven to the insurance companies that we can make that saving, they are now willing to write about 7 percent cheaper than they were before, so you might use an insurance company or you might  
838 extend this self-insurance. But I might say this: Whether you use any insurance company or not—

COMM. ALLDREDGE. Which is really no insurance at all in the technical sense?

MR. ARBOUR. What?

COMM. ALLDREDGE. Which is really no insurance at all in the technical sense? That is right; isn't it?

MR. ARBOUR. That is right, but I would say this, that whether you place it with an insurance company or whether you are self-insurers, that our opinion is, with safety organization, with road patrols that we have had to inaugurate in our organization—they certainly should be extended throughout this entire system and with very little cost and very little expense we could maintain that safety program and that road patrol. I mean we could extend it to complete this system for very little cost and, gentlemen, that has reduced our accident frequency during the past six years by over 45 percent, and when you reduce accident frequency, you reduce hazards to the public on the highway, because every breakdown is a potential accident.

COMM. PATTERSON. Well, that is not anything peculiar to a consolidated company? Even the smallest company could do that?

MR. ARBOUR. No; they could not, Mr. Commissioner, because you have to have enough to work with to produce such an organization, and in my little company we spent something  
839 like \$70,000 or \$80,000 in our work, and a smaller company could not do that. We patrol every mile of our highways.

COMM. PATTERSON. Does your maintenance cost you more per mile than than a smaller company's or the larger companies?

MR. ARBOUR. Well, I can refer you to the record here. We have the lowest maintenance cost of any company involved in this record.

Commr. PATTERSON. Then it pays you to do it?

Mr. ARBOUR. That is right.

Commr. PATTERSON. It would pay a smaller company to do it?

Mr. ARBOUR. That is right, but what I am driving at, Mr. Commissioner, is unless you do it on a large scale it just does not save you anything. You cannot save anything by it.

Commr. PATTERSON. Well, I do it with my automobile, and I only have one.

Mr. ARBOUR. I would also recommend standardization of units—I mean standardization of facilities in particular localities.

Commr. ALLDREDGE. Is somebody, now, going to tell us how all this is going to be translated into public interest? Is the public going to get the benefit out of it from improved service, or lower rates, or both?

Mr. ARBOUR. Well, Mr. Commissioner, I tried to convey—probably I missed my point—that we would improve service tremendously by getting this equipment. I tried to prove that by direct route haul that we could improve the service by 12 hours.

Commr. ALLDREDGE. I thought you were emphasizing the saving of expense.

Mr. ARBOUR. No. I tried to say that the maintenance and safety will help and improve the service and will also save expense.

And, in concluding—

Commr. ALLDREDGE. You are not urging upon us any thought that this will result in any lowering of rates?

Mr. ARBOUR. I am not, but I can say this, make this statement: That it certainly will help maintain as near the present level, because at the end you wind up as to what your costs are, what have you got to get for your work, regardless of whether it is freight rates or what it is, in my opinion?

Commr. ALLDREDGE. Well, the way these motor carriers have been doing is winding up in the way the railroads have published them; isn't it?

Mr. ARBOUR. Well, I am almost going to have to agree with you in some sections.

Commr. ALLDREDGE. In New England you have a different system?

Mr. ARBOUR. I did not want to bring that out.

841 But in concluding, gentlemen, from my experience I do not believe—and mine has been a practical experience from other consolidations—that anybody is going to be hurt by this combination. I think it will help the public, and particularly the shipping public, and I think it is a progressive step in the industry, and I hope that you will give it your favorable consideration.

Act. Chrmn. AITCHISON. Mr. Adkins. Are you gentlemen going to save any time for reply?

Mr. SULLIVAN. I was wondering. I think we are, because I know Mr. Adkins told me he would be brief. We originally intended to.

Act. Chrmn. AITCHISON. Mr. Adkins.

842. Argument of Mr. LEONARD D. ADKINS:

Mr. ADKINS. May it please the Commission, my name is Leonard D. Adkins. I am counsel for The Transport Company and for Kuhn, Loeb and Company. Mr. Sullivan has been good enough to allow me a few minutes of his time so that I can explain to the Commission the somewhat anomalous situation in which Arrow Carrier Corporation is in this picture.

In 1940, The Transport Company, which is not, of course, the same corporation as Associated Transport, entered into an agreement with the stockholders of Arrow Carrier Corporation. That agreement was made in connection with the application which The Transport Company then had pending before the Commission for a unification of a large group of motor carriers. That agreement provided for the sale of the stock of Arrow Carrier Corporation for \$1,100,000 approximately, payable in cash. When the Commission disapproved the application of The Transport Company, the Arrow contract remained in effect. It was extended from time to time in order to see what, if anything, could be worked out. The last extension, aside from one for a week in December in trying to work it out, was made in April 1941. In connection with the extensions, the Transport Company bought outright the preferred stock of Arrow for \$107,000. That was its par value,

and it paid a hundred thousand dollars in cash on account

843 of the purchase price of the common stock, leaving \$900,000

still to be paid. Kuhn, Loeb lent the Transport Company

to make those payments, so that in December 1941, Transport had in effect an option to complete that purchase by paying \$900,000.

It was an option because the contract expressly provided that if Transport selected not to go ahead, the only penalty would be

the forfeiture of the hundred thousand dollars. When it came to be December 1941, and this proceeding was not closed, strong

efforts were made to persuade Arrow stockholders to make a further extension of the contract until such time as this proceeding

could be determined. They were not willing to do that. They insisted on being paid the \$900,000 in cash or the equivalent of

cash—that is, short term notes of a solvent obligor—and one of the reasons at least they would not make the extension was because

they were afraid that if that transaction were closed in 1942 instead of 1941, the change in the income tax on capital gains might be

such as to materially reduce their actual price they would get. I don't know about their tax situation, but I understand that Mr. Ackerman and his associates, like most of these gentlemen here, built up their companies from a small beginning. They had, therefore, a low tax cost for their stock and a high tax profit, and the income tax rates made a material difference to them. As result of this situation, there is not at the moment and contract  
844 between The Transport Company or Kuhn, Loeb and Company and the stockholders of Arrow Carrier Corporation.

We have had conversations with the stockholders of Arrow, and it is our belief that they would be prepared now to make a new contract for cash if this transaction were to go through. I can't promise that, but that is our belief and expectation, that if the Commission does authorize the acquisition of Arrow by Associated Transport it will be possible for Transport Company to acquire the stock and turn it in. Mr. Horton correctly stated that Associated is obligated under its contract with Transport to acquire the Arrow stock if the Commission approves the acquisition. Similarly, Transport is obligated to turn it in if the Commission approves the acquisition. Of course, if Transport cannot get the Arrow stock, Associated cannot acquire it, and it is equally true, obviously, that Associated is not bound if the Commission fails to approve the acquisition.

It is my understanding, from what these gentlemen have said, both here and previously, that they regard Arrow as a desirable inclusion in this unification, but not as an essential one. I am not here to argue to your Honors that you should or should not include Arrow. I am merely here to give you the facts, and you have from the record the practical operating facts, and you will decide whether or not the inclusion is desirable.

845 I do want to say just one further word in regard to the attacks which have been made on this transaction by the Department of Justice and the Department of Agriculture, apparently based primarily on the fact that Kuhn, Loeb is a participant in the proposed transaction through its ownership of the stock of The Transport Company and through The Transport Company's former contract with the stockholders of Arrow. Apparently the basis of this opposition is solely that Kuhn, Loeb and Company has done investment banking for railroads. Apparently the fear is that Kuhn, Loeb's interest in this picture is a railroad interest and that if Kuhn, Loeb is permitted to acquire the stock of Associated, which would be issued in exchange for the Arrow stock, that stock will somehow be used for the benefit of the railroads and to the detriment of Associated. There is not a single even implication in the record to support the insinua-

tion that Kuhn, Loeb is interested in this transaction from any railroad standpoint, nor is that the fact. Kuhn, Loeb's interest is solely a financial interest. They have put money into this picture, at least \$200,000, paid on account of the stock of Arrow, and quite a lot of money spent on the expenses of the audits and accounts that Mr. Horton spoke about that were purchased from the original Transport Company. They believe that the Associated stock which they would receive for the Arrow stock would in due course be worth more than they would have to pay  
846 for the Arrow stock, and that is the sole interest of Kuhn,

Loeb in this picture. They are not out to tie up their capital in permanent investments if they can help it. Their business is to buy and resell securities. They render banking service by providing the corporations' cash for their securities, and by reselling those securities. That is what they did in this case.

The Arrow stockholders were not willing to turn in their stock for stock of Associated or for stock of the earlier Transport Company. They insisted on cash. Kuhn, Loeb's function was to provide that cash. It seems too bad that that relatively accidental connection of Kuhn, Loeb almost with this case should have brought down on the heads of the proponents of this plan an attack which seems to have nothing to do with the merits of the unification as such, but only to do with the apparent—with the imagination really of somebody as to what investment bankers, may do.

Kuhn, Loeb has no desire to exercise any control over this company. If the Commission approves the unification and the inclusion of Arrow, Kuhn, Loeb will be entirely willing to accept any condition which the Commission might impose as to voting the stock which they might acquire, so long as they owned it. It could be put in a voting trust with trustees satisfactory to the Commission, as the Commission has done in some of the railroad cases where there was a question.

847 I won't attempt to suggest to your Honors details of how that could be done, but I want to say very strongly that if there is any fear in anybody's mind that Kuhn, Loeb will exercise any control for any improper purpose, we are entirely willing to accept any condition which your Honors may desire to impose. Thank you.

Act. Chairman. AITCHISON: That leaves about thirty-eight minutes left, Mr. Sullivan.

Mr. SULLIVAN. Thirty-eight?

Act. Chairman. AITCHISON. Yes.

Mr. SULLIVAN. Thank you.

Act. Chairman. AITCHISON. Mr. Thatcher wishes to speak for a moment or two. You had no time reserved, but be very brief.

848      **Argument of Mr. HERBERT S. THATCHER:**

**Mr. THATCHER.** My name is Herbert S. Thatcher, associated with Joseph A. Padway, counsel for the International Brotherhood of Teamsters. I would like to make a brief statement respecting the teamsters' position in regard to this merger.

**Commr. ALLDREDGE.** By the way, do these drivers belong to that organization?

**Mr. THATCHER.** Eighty-five per cent; yes.

**Commr. PATTERSON.** Whom does the other fifteen per cent belong to?

**Mr. THATCHER.** I think they are probably unorganized. I don't know.

**Mr. SULLIVAN.** They are unorganized, your Honor.

**Mr. THATCHER.** The International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers has thoroughly examined and investigated this application from the viewpoint of labor. We appeared in these proceedings and cross-examined witnesses. Because of the fact that the overwhelming majority of the employees of the companies are members of our organization, and because of the expression by the company of an intention to enter into collective bargaining relationships affording protection to and conferring benefits upon our members and, finally, because of the present conditions in the country, we are satisfied in 849 this case to accept and rely on the testimony of the parties and the Examiner's findings. We are of the opinion that labor will not be adversely affected by the granting of this application but, on the contrary, will be benefitted thereby.

We, therefore, accept the good faith of Associated Transport's expressed intention to negotiate proper contracts for the protection of our members with respect to hardships that may arise in the cases of certain employees by reason of the merger. Under these circumstances, we do not ask for an order of the Commission covering such possible contingencies. We wish to withdraw our previous objections. We desire to be recorded as supporting this application.

**Act. Chmn. AITCHISON.** I understand Senator Shipstead and Senator O'Mahoney desire to be heard this afternoon. Mr.

Burclmore, are you ready to proceed?

850      **Argument of Mr. JOHN S. BURCHMORE:**

**Mr. BURCHMORE.** The National Industrial Traffic League for which I speak took no active part in the proceeding but had representatives present at. I think, every session or almost every session of the taking of testimony, and we filed brief and exceptions on behalf of that organization. Now, I am not appearing here for the purpose of objecting to the granting of these applica-

tions. We are appearing as a matter of principle, and I had supposed—I don't mean to comment at all on the way this has been argued—that I would not address you on a subject which had been fully and adequately described as to just what these applications were, but I think the argument so far has proceeded on the assumption that you gentlemen have all read the Examiner's report and are thoroughly familiar with the set-up. Maybe I ought to state that I understand what the set-up is, so you will know I understand it in terms of what I understand the set-up to be.

There are two applications here, one for consolidation or merger of eight companies operating some 300,000 vehicles, I believe, and as to that we apprehend that—and the other is an application for the issuance of securities by the new company which will make possible this merger and consolidation in the operation of the companies that result. The Examiner in a very voluminous report approves both applications; that is, recommends  
851 your approval of both applications, the application under Section 5 for merger, and the application under Section 214 for the issuance of preferred and common stock.

Now, the League filed three exceptions. We question the soundness and sufficiency of the findings on sheet 47 as to their adequacy to afford a full and a maturer explanation of all those features of the financial structure which may affect the public and as to their adequacy to support the second conclusion on sheet 54 that the issuance of securities should be approved. Secondly, we urge that the Examiner has not set forth correctly the contention and position of the League which he sets forth on sheet 44. We further raise the question whether the Examiner recognizes the duty and policy of the Commission as regards advertising and future market price of securities; and.

Third, we say that the Examiner correctly takes the view in the chapter on issuance of securities in the concluding chapter on sheet 50 that questions of rate-making policy should not be considered in cases under Section 5 but should be reserved for determination when they arise in subsequent rate cases. For that very reason, however—and that goes to the reason of our intervention here—for that reason, however, the greatest care should be exercised to insure that nothing will be permitted to be done in the way of consolidation or the issuance of the securities at this  
852 time which would work to the disadvantage of anyone.

The Examiner's report is at best unconvincing to the League, which desires only a thorough scrutiny and complete readjustments. I certainly am in a little delicate position here. In this respect, I am perfectly conscious that many members of

the League—and I am speaking now of an organization of shippers; not of crusaders or anything, but of shippers—many of these shippers think this is an excellent merger and that it deserves support and approval. There are others that question it. I am not going here to say something that blights this proposition if it should not be blighted, but I only want to say to you certain principles which the League wants applied in questions of merger and in issuance of securities.

COMM. MAHAFFIE. You really recommend we write a little better report; do you?

MR. BURCHMORE. I certainly do, and, Mr. Commissioner, will you subscribe to what the Examiner says in this report when he slaps the Commission on the wrist and says, "Why, now, now, why did you get in here?"

COMM. MAHAFFIE. He slaps the League, don't you mean?

MR. BURCHMORE. He slaps the League, didn't I say?

COMM. MAHAFFIE. Slaps the Commission.

MR. BURCHMORE (laughter). Oh, no.

COMM. MAHAFFIE. You would not be so excited if he had  
853 been correct; would you?

MR. BURCHMORE. I would speak better. On sheet 45 the Examiner says: "Approval of the instant transactions would not entail any finding by the Commission that the common stock proposed to be issued has a greater value than par, and, if subsequently the public wished to buy such stock at a greater price, any such purchase would be at its own risk and not in reliance upon anything this Commission had found or said." I don't think that is your expression of policy or attitude in these matters. Following: "Obviously, the Commission cannot control all future selling prices of stock, issuance of which it authorizes, and, contrary to the League's expressed fears, would not, and could not, under the law, base rates on stock quotations."

Now, let me state very briefly what I understand this financing situation to be. It is described on sheets 3 and 40 and 41 of the proposed report. They have applied here—this Delaware corporation, under the Delaware law, is authorized to issue one hundred thousand shares of common—preferred and one million shares of common. They have actually issued 1,480,000 shares of common which are outstanding and of which a part belongs  
to Mr. Seymour. This part is redeemable in the future at  
854 105. It is exchangeable in the future in the ratio of four

shares of common for one of preferred. Now, four shares of \$100 common stock may be exchanged in the future for \$100 preferred, which seems to suggest the idea that somebody thinks

that somehow or other the common will have a value of \$25 a share as against preferred stock that was issued wholly for value received.

Now, sheet 6 sets forth the formula upon which these companies that are selling their properties or putting their properties into the merger are being paid. Roughly speaking, they get 80 percent of the net worth of the properties in preferred stock, and then they get common stock on a formula which relates that common stock at \$1 per common share to the earnings of the underlying companies. The formula is in there on sheet 6, and you will find in the record Mr. Seymour's statement—I believe it is on page 147 of the record—where he says that this is an excellent formula that just means the cooperative merger; that the folks that now own the property come in to the new properties on a very commendable sort of formula.

I do not ask why they have adopted this mode—I am not going to curse it weakly by calling it a device—but why have they adopted his mode of \$1 common—the Department of Justice likes to call it a “razzle-dazzle”—why have they adopted this “razzle-dazzle” by which \$1 common is going to displace \$5-preferred? In the brief I filed for the League I, unfortunately, set forth this financing a little inaccurately in that I failed to note that 200,000 of the \$1 par common stock was a duplication in the sense that it is not to be immediately issued but it is to be later reserved for issuance on this exchange basis for the preferred, so that they will either have in the end 64,000 shares of preferred and 3,000 shares of common or 8,000 of common, but they won't have both.

Commr. MAHAFFIE. Is it your position that this company is being under-capitalized?

Mr. BURCHMORE. So far as I am concerned, it is being mysteriously financed.

Commr. MAHAFFIE. It is mysterious in that, if I follow you, it is being undercapitalized. Now, that is novel.

Mr. BURCHMORE. No; that is not my point at all. I just don't want to be regarded as sitting in the middle of the Department of Agriculture and the Department of Justice in condemning this thing as a “razzle-dazzle” high finance scheme, that should be disapproved by your Honors, and I, on the other hand, don't want to be understood as endorsing the financing which we cannot understand on the record. On the admissions and in the opening brief for the applicant there isn't any description of what this financing is. There is not any citation of the record from which you can learn what it means.

I do now want to direct your attention to the situation  
856 under the Delaware law, and this corporation is a Delaware corporation. I direct your attention to that from this point of view: Here is a corporation—as to corporations generally, the policy of the United States is one of protection of the public and protection of investors through the Securities and Exchange Commission as to corporations generally, but a corporation such as this, other common carriers subject to your jurisdiction are immune from the Securities and Exchange law and regulations. This corporation is. As to railroads and motor carriers you have the same duty and privilege of protecting the public and investors generally and sound financing as regards motor carriers and railroads. Now, here is a proposal set before you for approval of the issuance of securities that involve this mode and this method that I am speaking of, which is somewhat mysterious to us, and I want to say in the light of many years' experience in some matters I have great admiration for the skill of bankers, for the skill of lawyers, for the skill of financiers, and for the skill of gentlemen like Mr. Seymour in devising financing schemes which are entirely legal, entirely in conformity with statutes, and yet which have other amazing results in the final analysis.

In the Delaware law, which I am not prepared to argue what this law means—I haven't followed it through the decisions—

but in the Delaware law there is a very peculiar status of  
857 common stock, and if you will consider that Delaware law—

and you have no opinion of counsel here as to the effect of the Delaware law in their own setup—it is perfectly possible for this matter to be manipulated in time to come so that without your approval we may find in the hands of the public common stock the public has paid \$25 a share for. Now, do you want that to occur? Now, viewing the matter, there is no warrant at all for any such capitalization of these properties except the capitalization based on the very handsome earnings they might in the future be able to realize—a financing scheme that would run contrary to your policies. What I am referring to is Section 14 of the General Law of the Corporation Law of Delaware.

It provides, among other things, that: "The amounts so fixed as capital must equal the par value." That is, must be as much as the par value, "of shares issued but may exceed that amount, and the capital may be increased at any time by transfer from surplus. Stock having a par value of \$1 may be sold or issued at any price and either \$1 or any greater amount paid in may be allocated to capital."

Consequently, the capital of the Delaware corporation is not necessarily limited to the par value of its issued stock, and there

is considerable in there that if the stock is sold for more than par value or issued for more than par value, the value for rate-making purposes, if it is at all to be distinguished from valuation as distinguished from value of property, it might be any amount, and I say that the object is to have some common stock be authorized at \$1 and in the future not be issued at \$1 a share by the corporation but will be issued on a ratio of preferred which sells \$25 a share for the first three years. I think it is \$30 the next three, and \$35 the next three years. Now, don't ask me to analyze or explain that, but it does not seem that there must be a reason, not explained.

Now, we of the League—it is a part of our platform in these matters, we do not wish to see financing of motor carriers on any other basis than you apply to railroads, a financing that means in time to come the public owns stock which represents a large cost to the public and on which the corporation cannot produce earnings.

COMME. MAHAFFIE. Can you suggest any way that if stock becomes available for public purchase the public can be prohibited from paying any price it wants to for it?

MR. BURCHMORE. I suppose not, but if you are satisfied—with the little warning I am giving here, if you are satisfied with the set-up, and if you are satisfied with the Examiner's view of the matter, I am perfectly satisfied.

ACT. CHRMN. AITCHISON. Is the League seriously concerned in this situation with the fact that the Commission will interfere with the market value of the stocks and bonds?

859 MR. BURCHMORE. That you are or will?

ACT. CHRMN. AITCHISON. That we are.

MR. BURCHMORE. I don't think you are, no; and I say that if in deciding this your decision is such that you will make it very clear that all questions of policy, not only as regards rate cases, shall be reserved for rate cases when they arise with no estoppel or anything else from the facts of the decision in this case, why, the League is satisfied.

ACT. CHRMN. AITCHISON. Doesn't the law impose that restriction?

MR. BURCHMORE. Sometimes the law is interpreted differently than we see it, but I think so; yes.

ACT. CHRMN. AITCHISON. Suppose we were to put that in. Would it have any great efficacy as against a subsequent change of the law than the gold clause did, for instance?

MR. BURCHMORE. Well, I think your Honor can answer that better than I can.

ACT. CHRMN. AITCHISON. Well, what are you worrying about, Mr. Burchmore?

Mr. BURCHMORE. I think maybe what we may have worried our members about were the complications and the rumors and the things that have been going on off the record.

Act. Chrmn. AITCHISON. You are too old a practitioner to pay any attention to that, aren't you?

Mr. BURCHMORE. Sir?

860. Act. Chrmn. AITCHISON. I say, you are too old a practitioner to pay attention to rumors and backyard gossip; aren't you?

Mr. BURCHMORE. I ought to be.

Act. Chrmn. AITCHISON. I do not know what you are referring to. It has not reached us here that we know anything about.

Mr. BURCHMORE. This is a second attempt of the merger that you struck down in the Transport case which preceded this one and which has been mentioned in the earlier arguments. In that matter we came here seriously objecting to the set-up which meant something like a seventeen million dollar capitalization, and so forth, that would grow out of the proposition then set forth. You condemned it for reasons which met with our approval, which meet with our approval today. You seemed very closely to follow in form and in pattern that very proposition. It spelled and had the possibility inherent in it of the same results which you yourselves condemned in that proceeding, and we, therefore, were prompted in protection of those principles to participate in this case as we did in that one.

I am here to voice a warning about this thing, that it seems to us there are possibilities in this finance hearing that require settlement, that require definition, that require an opinion of counsel to you as to the effect of the Delaware statute and the future  
861 financing, and in our precluding part from you—

Commr. MAHAFFIE. We could probably get that directly from about 25 percent of the members of the National Industrial Traffic League, some of whom are Delaware corporations; aren't they?

Mr. BURCHMORE. I happen to be counsel for some of them, and I doubt whether you should issue an order carte blanche of approval of this financing on this record as made and with the conditions that you are adhering to and no such provision that the present ownership shall retain their stock or the present officers shall continue in effect. That is in the Commission's order, and you can permit issuance of securities but you cannot go beyond the provision of the law and say that there be no further transfers.

Commr. MAHAFFIE. Do you suggest we should seek to recognize corporations incorporated under the laws of Delaware on account of these vague areas in charter rights?

Mr. BURCHMORE. No; but always decide cases on the basis of the security itself and the corporation that issues it. In these motor rate cases they are now progressing, and in the discussions, in articles and periodicals and speeches about the duties of the motor carrier industry, and so forth, we have very sharp distinctions about it as between the motor carrier industry as a service industry, as to the rate of return, the earnings, and so forth, 862 as to the low rate of investment, and so forth. I am not so sure that you have clearly established the analogy or the distinction for rate-making purposes, so we are perfectly sure, and, remembering in the past the arguments with regard to watered stock of railroads, a corporation with a large outstanding capitalization recorded on its books as distinguished from mere market values on the ticker is not entitled to some consideration, and certainly it will have that consideration in the mind of the financing public.

If a corporation has stock which shows on its balance sheet is worth \$15,000,000, that is quite a difference if it has stock on its books of \$5,000,000 but a market value of \$15,000,000. We think financing will be considerably more difficult for motor carriers if there is a lack of earning upon the book of recorded capital as they have recorded it. In this particular set-up, it seems to me that the form of the application under the Delaware law might well result, without any further order from you, in this common stock being shown on its books as capital at the tune of \$25 or more per share which, on 800,000 shares, would be how many million dollars?

Commr. MAHAFFIE. Have you found any way that could be accomplished under the regulations of the Motor Carrier Act without approval of this Commission?

Mr. BURCHMORE. I have not been able to determine that where the corporate law covering that carrier expressly permits 863 the stock to have a stated value other than its initial value. This is a peculiar situation.

Commr. MAHAFFIE. Have you checked our classification in that regard, Mr. Burchmore?

Mr. BURCHMORE. No; I have not. I am not competent here to advise you of the answer, but only to suggest the question.

Act. Chrmn. ARCHISON. Mr. Donoho.

Mr. DONOHO. Mr. Chairman, the Department of Justice indicated to me that they would like to go next.

Act. Chrmn. ARCHISON. Oh, yes.

Mr. DONOHO. I thought they had indicated to you also.

Act. Chrmn. ARCHISON. Yes. All right, Mr. Arnold.

## Argument of Mr. THURMAN ARNOLD:

Mr. ARNOLD. When does the Commission rise for lunch?  
 Act. Chmn. AITCHISON. 12:30.

Mr. ARNOLD. At the outset, if the Commission please, I desire to state that the intervention of the Anti-Trust Division is in a spirit of cooperation with the Commission in carrying out the will and purpose of Congress. The Anti-Trust Division happens to be the only organization in Government particularly charged with the investigation of complaints with respects to restraints of trade. We attempt to present cases of undue restraints of trade before every appropriate agency of the Government. For example, our Small Business Section investigates and informs other agencies of the Government of cases where small businessmen are injured by application of policies through the defense agency, and it is in the same spirit that we present to this Commission our views on this case, which involves the Anti-Monopoly policy of the Interstate Commerce Act. Our appearance in this case is the result of numerous complaints and representations by representatives of responsible groups—

Commr. MAHAFFIE. Are those complaints a part of this record?

Mr. ARNOLD. A few of them are. Not all of them are. For instance, on January 22 Edward O'Neill wrote a letter to this Commission on behalf of the American Farm Bureau  
 865 Federation, and the others are simply in our office, and

I don't know that it is important other than the fact that we come here on the basis of such complaints, and the complaints are that this consolidation is going to have very far-reaching consequences in establishing a pattern of the development of the transportation system dominated and controlled by a few, small private groups.

Now, a glance at the map is sufficient to show that these complaints have substantial foundation. There is no question, if the Commission please, about the future power of that proposed combination. There is no question about its strategic position. It is admitted that it eliminates competing lines. It is larger by ten times than any other motor carrier operating in that territory and by two and a half times than any other motor carrier in the United States. It rests, as I see it, only on two justifications, so far as the Examiner's report is concerned.

First, because the managers of this merger promise future economies and conveniences of a little more than a million dollars, and, further, they assure the Examiner that they would not think of using the vast power granted to them in any way that would not be fair to competitors. They are not going to swat their

competitors like flies. They are going to treat them just as nice rabbits deserve.

866 Second, because of the Examiner's prediction there will still remain enough competition to prevent the merger from becoming a complete monopoly.

Now, in my own argument I wish to say that the tests laid down by the Examiner are contrary to the fundamental principles of the Transportation Act, and my colleague, Mr. Wiprud, will attempt to analyze the Examiner's report.

The simple question presented here is whether the dominant concerns in motor carrier transportation along the entire Atlantic seaboard can merge in such a way as to eliminate a large part of present competition because they are able to present a blueprint confidently promising future economies to come from that elimination of competition, in the absence of a showing that the public is now suffering from inadequate transportation service. If that question is answered in favor of the merger, I assert that a pattern will have been established which will mean the end of competitive transportation on the public highways.

The reason that result is inevitable does not lie in the lack of good faith or experience of the Examiner in guessing whether the economies indicated by these blueprints of the future will be carried out or not. It lies in the kind of judgment as to future conditions which such a test compels the Examiner or this Commission to make.

Broadly speaking, I think there are two ways of approaching the problem of merger or pooling of motor carrier systems 867 or services. The first is to examine existing conditions to see whether the public is getting adequate service. It is the duty of this Commission to insure adequate transportation service. If present transportation service is clearly inadequate, it becomes the duty of this Commission to approve such mergers or such pools or such agreements as will remedy the evil, taking, I think, always the lesser step; that is, the least step which will remedy that evil.

Act. CHRMN. ARCHISON. Isn't it our duty to go a little further than that? Isn't it our duty to get better service even if that service is adequate?

Mr. ARNOLD. Well, I might put it this way: With respect to the situation that can be changed, the step which is not irrevocable, and that is the pooling or the agreements. The Act says, "Economies in operation, and shall not unduly restrict competition." That is with respect to a service that is not irrevocable. With respect to the merger, the Act says, "only adequate service," and that is the only phrase that is used.

Now, these judgments are not defined by sharp tests. They may be loose or exacting according to the standards set up. They are, however, safeguarded by the fact that the Commission is dealing with present existing facts which can be examined. In other words, you are looking at an existing situation. Evidence 868 can be taken as to who is suffering from lack of adequate service and why. Remedies which involve some restraint on competition can be limited to curing the specific evil found, and the Commission can be given as a guide post the injunction that it shall permit no unnecessary or undue restraint on competition. Now, the idea behind this approach is the hope that future betterment, outside of correcting future circumstances, future development, will come from private initiative in a competitive system. All the Commission, I think, need concern itself about is to see that the public does not suffer from lack of adequate service while that competitive race is going on. That, I assert, is the spirit and the principle of the Transportation Act. At least, I submit it as one approach.

Now, let me contrast the other approach. Well, may I say this: that this, I think, is the principle that Congress intended, I think, is made more clear by the fact that they repealed the so-called guaranty provision of the Transportation Act. I was interested to note that the entire tenor of the arguments this morning were based on the theory that somebody ought to be guaranteed some earnings. You recall the mortgage on someone's home, the effect of inheritance taxes, the future of someone else's family. Well, those were simply the byproducts of that central idea, that by making earnings show you will improve transportation, and that idea is essentially a car tail idea, and I think that.

869 Now, the principle of Congress is made more abundantly clear by the guaranty of that provision.

Now, the second approach, the one adopted by the Examiner in this case, is to weigh the advantages of existing competition against a blueprint presented by the very men interested in removing competition, promising that future betterment of service will come faster through merger than through competition. This blueprint, as in this case, always leaves some competition existing as a sort of bow toward the competitive ideal. It always affirms that the man who dominates the merger has the most kindly and benevolent intentions toward competition. For instance, they have no intentions, as they assured this Commission, for any future mergers. Then, if they get into too much power the Commission can wave a wand and another organization capable of competing with that system will be organized. It works out perfectly.

Act. Chrmn. AITCHISON. We will suspend until two o'clock.  
(Whereupon, at 12:30 o'clock, p. m., a recess was taken until  
2:00 o'clock, of the same day.)

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AFTERNOON SESSION—2:00 P. M.

Act. Chrmn. AITCHISON. You may proceed.

Mr. ARNOLD. May it please the Commission, before the recess the Chairman asked me a question which involved the difference between the pooling section, which is not an irrevocable change, and the merger section, which is an irrevocable change.

I do not want to labor in that connection the exact meaning of these words—the exact meaning of “economic benefit,” the exact meaning of “economies in operation,” or the exact meaning of “adequate,” because these words are not capable of being put in a strait-jacket. They only wanted to indicate that the difference between those two sections is a very real basis—the irrevocability of the merger; the nonirrevocability of the agreement—and also to indicate that the interpretation you give those words in this statute depends entirely upon your approach to this problem of undue restraint of competition.

And, therefore, continuing in a way to answer that question on a broader scale, let me briefly review what I said to be the two approaches. One approach is to examine existing conditions in the service and to see how they may be remedied, limited by the existing conditions, at least in your view. The other is the ap-

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proach taken by the Examiner, which is to weigh the promises of a blueprint advanced by the people who have an interest in putting the mergers across against the statement that that blueprint will not work out as it is claimed. That view puts the Examiner in the position of a man who speculates on the future of a new enterprise. If the men dominating that enterprise are respectable and experienced, it is impossible to prove that they are not going to do what they say they are going to do. And thus is a pattern, we claim, created which means the end of competitive transportation.

And that is one of the reasons why we are here. We wish to get the maximum cooperation between this body and the Anti-Trust Division, which deals with similar problems. As this Commission knows, at your suggestion we are bringing Anti-Trust proceedings in a case against carriers, which is beyond the scope of the Interstate Commerce Act, that is, beyond the relief of the Interstate Commerce Act. We do not wish to have a conflict of policy on the sections which are within our province to prosecute and the decisions of the Commission. It is, therefore, I think, important that in the occasional case that appears to involve great

questions of public policy, as this one does, that we at least present our views so that we may avoid conflicting views on similar problems. We have developed and we do develop concepts in the suits,

and we think those concepts are important. We do not  
872 think that we should be here in every suit, of course. We think that we should only be here where in the interest of cooperation we can avoid those conflicting concepts.

In this case where we are weighing a blueprint we get the type of test which I think inevitably leads to monopoly. For instance, what is the only answer that we can make to the brave promises which we heard this morning and which are reflected in the record? The only thing we can say is that we do not believe that these men are going to accomplish these things. Whereupon it draws the challenge either against their integrity or against their ability, because anybody can put on paper a merger which will cure all existing evils.

The futility and the inconclusiveness of that test, I think, is very apparent from the reply brief. The Antitrust Division argues that the history of the growth of monopolies shows that the proposed combination, involving as it does elimination of competition, will injure the public interest. The reply brief calls it "a storm of vilification and abuse unprecedented in their business experience." Well, it is interesting to read that brief. I do not criticize it. It is the only kind of argument you can make.

Act. CHRM. ARCHISON. The Division dealt with this problem in its brief, didn't it?

Mr. ARNOLD. Exactly. In other words, one side says he will, and the other side says he won't, and that is the type of argument which leads to apoplexy.

873 I simply point out that inevitable result of weighing a blueprint, instead of starting out with the existing conditions, and I assert that by this approach, this examination of prophecies as the starting point—I claim no iron-clad meaning for the words "adequate service," but I simply say that by this approach power is given to private groups to get into strategic positions to dominate an entire transportation system on the faith of their representations of intent, and after the merger is made the only safeguard is some sort of breach of promise action on the part of this Commission, and this, I think, is only the power to lock the stable door after the horse is gone. The strategic position which this approach gives to private groups is beautifully illustrated in this record. It seems to me that the principal contribution to adequate service or better service in this case is the establishment of a through trailer service to New York. The Examiner admits that it can be accomplished by agreements, but

he says the applicants are reluctant to improve their service by any such simple remedy, and therefore they come before the Commission and assert that they are not willing to enter into an agreement, and for that reason they will conduct sort of a sit-down strike; they will not improve their service unless you grant them this merger; that is, the reluctance to cooperate, or the difficulties which they create in pooling equipment, is the reason 874 why they should be given the right to dominate the Atlantic seaboard.

Now, I only assert that it is not the purpose of Congress to determine the limits of competition by weighing opposing prophecies as to whether betterment of service would come faster through merger than through competition.

Congress has said that the future development of the transportation industry must come through competition and not through guesses as to the future fulfillment of promises by men who have an interest in making them. It has given the Commission the power to eliminate such competition as deprives the public of present adequate services; but it has directed the Commission in exercising that power to see that the motor-carrier transportation remains competitive in an operator and not in a token sense.

Now, may I briefly outline these somewhat loose general principles, which I think make a tremendous difference in the results of the case, regardless of the fact that none of them can be strait-jackets. What are they? Well, negatively stated, they are as follows:

In the first place, the Interstate Commerce Act, I do not believe, is an attempt to protect carriers against competition.

Second, it is not a legislative plan to promote regulated monopoly.

Third, it is not an act to encourage the merger of motor services into a vast system, where adequate transportation 875 facilities can be maintained without that merger.

Putting this principle in a positive form, I will say that the Transportation Act directs this Commission to use its power of approval of pooling arrangements or mergers in the light of the spirit and principle provided in the Sherman Act, applied to the peculiar problem of transportation in which this Commission is expert. In effect, the Interstate Commerce Act has transferred the power and duty to enforce the principles of the antitrust laws from the Federal Courts to this Commission.

In other words, on these questions of judgment involved in the unreasonableness of the restraint, the undue nature of the restraint, instead of having 96 Federal districts, which could arrive at different judgments, you have that power exclusively vested in the

Commission to decide for the entire transportation system of the country those questions which do rest on skill and discretion and judgment. But I assert that the principle to be applied by the Commission is precisely the same under undue restraints of competition as it was under unreasonable restraints of competition.

The justification for empowering this Commission to enforce the principles of the Sherman Act with respect to transportation is obvious. It is expert in the determination of the specialized problem of transportation. Transportation above all things becomes chaotic without some control. Therefore, it was thought appropriate to transfer this thing to a single expert body.

Now, in the Appalachian Coals case, which, as this Commission knows, is the case which roughly represents a combination for the interests of economic benefits or better service under the antitrust laws, I think you have the same principles, which can be applied by this Commission. A marketing agency was there approved in order to stabilize on a limited scale the marketing of coal. The economic betterment of the parties was one of the reasons for the combination, and in approving it the Court relied upon two factors:

First, the chaotic condition of the coal industry;

Second, the fact that the marketing agency was not of sufficient size to dominate the entire market, the entire national market, or any principal part of it.

And these two principles I think are fundamental to the interpretation of the Transportation Act. Adequate service must be maintained; competition must not be eliminated beyond that point.

Economies in operation may be approved, but not at a price which involves undue restraints of competition. The Commission's action must be consistent with the public interest, but this does not mean that the Commission is empowered to determine that regulated monopoly is in the public interest; it means that the interests of the public are paramount to the interests of private groups.

The Act does not make "economy in operation" a consideration for the approval of a merger. Now, that is not conclusive, but it is a straw which shows the way I think Congress intended it. That phrase is found only in the section applying to an arrangement which is not final, which can be broken down if it does not work, to wit, agreements or pooling. Only the imperative necessity of providing "adequate transportation service" will justify the final and irrevocable step of the merger of a number of companies into one. In other words, economies in operation might well justify the Commission in the approval in this case of

an exchange, or agreement to exchange, equipment for through service to New York. It does not permit the companies to decline to put these economies into operation by agreement and then urge that the impossibility of getting together on such an agreement is a ground for justifying the irrevocable step of creating a merger which dominates the Atlantic seaboard. This I think is the only interpretation possible under the direction of Congress that the Commission apply the great competitive tradition of the Sherman Act to transportation.

Now, I am frank to admit that we get nowhere by seeking for precise definitions of these words along the lines of the interpretation of a tax statute. These phrases, "consistent with the public interest," "unduly restrain" competition," 878 "adequate transportation service," construed in the light of a non-competitive tradition, are the very tools by which a cartel system may be set up. Taken by themselves, without consideration of national policy, they are deuces wild. They will fill any hand. The result depends on what you are drawing for. The accuracy of this statement I think can be shown by examining the decisions of the cartel courts which destroyed the competitive system in Germany and which finally, at the close of the Weimar Republic, created such disparity of prices between agriculture and industry that agricultural products, though scarce, sold at ruinously low prices, and industrial products, though plentiful, could not be exchanged.

Now, Germany prior to the war represented the ideal of non-competitive cartels. It used the identical words in establishing that system that we find in the Transportation Act, excepting that it impressed them with different tradition.

Now, I do not wish to intimate that the applicants or the Examiner have any sympathy or connection with the Germans. I use the German illustration only because out of the German cartel courts comes the best example of cartel reasoning. If we take a typical cartel decision, we will find it following practically the same lines as the Examiner's report. The way that the Trial Examiner has gone has been the way of the cartel court, and his decision could well have been handed down in Germany 879 during any year from 1926 until shortly before the war.

It starts out with the notion that he is convinced that better service will come from the merger than without it. He then looks to see if any substantial competition is left. Having thus protected himself against the monopoly, he allows the merger to proceed on the promise of the applicants not to abuse their power.

Commr. MAHAFFIE. Did the cartel system extend to motor transportation? Were there motor carriers put into cartels?

Mr. ARNOLD. The cartel system was, you might say, a name which applied after the thing had happened. In other words, it was a name which was given to a society which was dominated by these combinations.

Now, of course, there is this difference, that in Germany there was not the need for merger since agreements were treated the same as the Examiner has treated the merger.

But I wish to read from Mr. Justice Hughes' opinion in the Appalachian Coals case, because it shows that we make no distinction between mergers and agreements. Mr. Justice Hughes said:

"The argument that integration may be considered a normal expansion of business, while a combination of independent producers in a common selling agency should be treated as abnormal—that one is a legitimate enterprise and the other is not—makes but an artificial distinction. The Anti-Trust Act aims at sub-  
880 stance. Nothing in theory or experience indicates that the selection of a common selling agency to represent a number of producers should be deemed to be more abnormal than the formation of a huge corporation bringing various independent units into one ownership. Either may be prompted by business exigencies, and the statute gives to neither a special privilege. The question in either case is whether there is an unreasonable restraint of trade or any attempt to monopolize. If there is, the combination cannot escape because it has chosen corporate form; and, if there is not, it is not to be condemned because of the absence of corporate integration."

So I think that there is not much difference in the fact that the cartel decisions refer to cartel combinations and this is a merger.

Now, a fundamental cartel principle was that free competition should be maintained as far as it was consistent with the public interest in the supposed superior efficiency of the cartel combination. For example, on December 21, 1935, the German court decided that the combination of different enterprises was in this sort of public interest. Nevertheless, under the cartel system substantial competition had to be maintained. So the court granted a compulsory license to avoid the destruction of one of the plants in the industry. In other words, the court was trying to promote

the great principle of unification and also preserve substantial competition, just as the Examiner said in his report.  
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The cartel court continuously in many cases decided that the danger of destruction of free competition was a good cause for the cancellation of cartel obligations. For example, on November 19, 1935, the cartel court held that "the public interest and common welfare" required the continued existence of an independent competing manufacturer of dental equipment, and in its

decision the cartel court said: "Free competition shall be protected for the German good and shall not be hampered so long as it is based on reasonable conditions."

In another case, on September 13, 1935, the German cartel court compelled an independent window glass manufacturer to join the cartel under the following language: "The aim of any market regulation is to keep alive as many enterprises as possible. Enterprises such as the defendant endanger this aim very much by using the price policy which may be justifiable for one of the other enterprises but cannot be justified in consideration of the common welfare."

Now, these are typical. It runs through all the cartel decisions which reached that result.

It is a common error that the cartel system in theory opposes free competition. The cartel system always attempts to provide for substantial competition. It always attempts to guard against monopoly. It never desires to restrain trade unduly. It  
882 creates monopoly actually, not because of any bad intentions, but because of the nature of the test, the test being always the promise of the proof which comes in and offers these benefits which cannot be weighed against any existing standard. Instead of putting their feet on the ground and seeing what limited remedies are required in the present, they look into the future. As Mr. Seymour said, he is not a promoter, but he did a very good job of promoting the idea of the future efficiency of this scheme. If you express disbelief, you irritate the most prominent men in the industry, as we have done in this case; and if they come back at us, they irritate us, and we come to the kind of argument in which the prominent and experienced men always win, because only the respectable and prominent men in an industry ever propose a cartel.

That is the history and the attitude of the cartel system, and I think it is emphatically not the test laid down by Congress.

COMM. MAHAFFIE. Mr. Attorney General, in discussing the competitive situation do you include competition by other forms of transportation than common carriers by motor?

MR. ARNOLD. I would say that in the expert opinion of this Commission certainly all forms of competition should be considered. I do not come here to advise the Commission on transportation problems. I only come here because I think the  
883 principles on which this merger would be approved on the present record would lead directly to the cartel system.

I do not come here saying that it is not necessary to have end-to-end combinations. I only come here saying that the attitude should first be an examination of the present adequacy of transportation; a natural reluctance to change that unless con-

ditions imperatively require it, wherever it involved elimination of competition; as it is admitted in this case; and, finally, that in approaching the problem of remedying those situations, the lesser remedy, the one which does not create an irrevocable change in the industry, to wit, the pooling should be resorted to before the irrevocable step is taken. And I say that this record is a record which sweeps all those protective attitudes aside and permits these very words in the statute "substantial competition" to result in what I think will be the complete domination of the motor carrier industry.

Commr. LEE. Do you take into consideration the fact that the Commission has power to issue certificates to operate over the same highways?

Mr. ARNOLD. I regard that, of course, as in the nature of weighing—I mean I think it can be taken into consideration, but I regard that as in the nature of weighing a promise of what a future Commission will do, whether it would order a breach of promise action against this merger, and I think experience has shown

884 that it is pretty ineffective. What chance, I submit, has the new combination got to form and grow and suddenly break into that transportation system? I simply submit it never happened in Germany. As you know, Germany issued, instead of certificates of convenience and necessity, compulsory licenses to do business—the same idea, and once established your compulsory license does not create competition. It might have a chance, but the water is under the dam. And the chances seem to be so remote that that prophecy cannot be weighed against the other prophecy, I think it is the most convenient, psychological escape, and it is used in this case by someone who comes and proposes this merger. They say, "We are great and good men. We are men of experience. We won't go wrong. If we do, you just get somebody else to come in here and compete with us, against our opposition," because, remember, if they go wrong, and you get someone in here to compete with them, their opposition will become very real, and you will have the same thing all over again.

Commr. ALLDREDGE. I presume you feel that it should not be a perfect consolidation; that there should be some ragged edges to a thing like that.

Mr. ARNOLD. Oh, of course. There is no absolute monopoly in the world. There was not in Germany. There is not in this country.

I find that I have taken up all my colleague's time and so I submit—

885 Act. Chmn. ARCHISON. Mr. Attorney General, if you want to comment upon the general line of cases in which

the Commission has held in the past that it had no duty to enforce the provision of the Anti-Trust Act, you may do so.

Mr. ARNOLD. I do not think the Commission has such a duty. I am only suggesting that the Commission is given the power and is delegated with the power to enforce the principles of the Sherman Anti-Trust Laws; that if some Court had decided in the west that a certain merger under the Anti-Trust Laws was not a reasonable restraint of trade, it would not bind the Commission.

Act. CHRMN. AITCHISON. Then the other question I wanted to ask was whether or not you think there is any analogy between the Sherman Anti-Trust Act and the acts relating to tariffs, because I call your attention to the fact that the Supreme Court has held that this Commission had no duty to aid in the enforcement of the policy of Congress with respect to tariffs.

Mr. ARNOLD. I do not think it has any duty to aid in enforcing the various acts, the Sherman Anti-Trust Act, the Clayton Act, and all the rest; but I say from the Anti-Trust Act has been bodily lifted the very phrase which the Court finally reached as a final interpretation, that is, "undue restraints of competition." The

only difference is between "undue" and "unreasonable," and  
886 you now are enforcing that phrase instead of the Courts.

The intricacies of the Sherman Act are for us to enforce in the Federal Courts. But I am only saying that you have been given control and direction of this great tradition.

Act. CHRMN. AITCHISON. I have not had occasion to look into this myself before, but I had the impression that this "undue restraint of competition" phrase in Section 5, paragraph 2, I think it is, relates to a case where one of the carriers is a railroad.

Mr. ARNOLD. Yes; your Honor. In other words, the pooling act says that, consistent with the public interest, the Court may permit a merger, having in mind two other things, but this is the only important one, "adequate transportation"; and then with the railroad it puts in "undue restraint of trade."

Now, I do not claim that the argument cannot be made that Congress intended that merger should go forward because of that ellipsis. I do not know how you would explain "adequate transportation" under that theory. But I do not think that we get anywhere by trying to torture these loose phrases. I think that my interpretation of "consistent with the public interest," which the Commission has already held involves adherence to the competitive theory, plus the starting point "adequate transportation,"

achieves the result of making the Commission slower to op-  
887 pose a merger than a pooling. And I maintain that is reasonable, because the merger is irrevocable and the pool is not irrevocable. But I am not standing before this Commission,

particularly in view of what the cartel court did with these words, saying that these words, apart from the tradition, compel you to do anything. They are just not that kind of words. No anti-monopoly statute—and they have been passed since Corinth—no anti-monopoly statute ever did succeed in pinning anyone down to the strait jacket of any words.

Mr. WIPRUD. May I inquire how much time I have, Mr. Chairman?

Act. CHRMN. AITCHISON. About twenty-six minutes. You have until three o'clock.

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Argument of Mr. ARNE C. WIPRUD:

Mr. WIPRUD. If the Commission please, this is a proceeding under Section 5 of the Interstate Commerce Act, wherein Commission approval is sought for the merger of eight common carriers of property by motor vehicle, presently operating in 19 states and the District of Columbia, into one carrier, which then would have operating rights extending from northern New York, northern Massachusetts, along the Atlantic seaboard, to Pensacola, Florida, and to New Orleans, Louisiana.

The only map showing these routes that was introduced by applicant was attached to the application. Inasmuch as this map only shows the main routes operated by these carriers, the Anti-Trust Division undertook the preparation of a more detailed map, which is Intervener's Exhibit No. 21. That map is a composite routes map, showing the routes here proposed.

Now, the record discloses that the regular route operation of the carriers parties to this merger presently extends over 37,844 highway miles. Merged, as shown on this exhibit, it would extend over 24,338 highway miles. Therefore, the effect of the merger itself would be to eliminate some 13,546 miles of parallel or duplicate routes, between two or more presently independent competing carriers.

The operating revenues of these carriers for the year 1940 was \$12,705,000, and for the year 1941, \$24,275,000. That is actual to April 30, and the balance estimated.

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Now, the distribution of these 13,546 duplicate or parallel routes is very significant. Substantially all of the operations of Consolidated Motor Lines are paralleled by one or more carriers parties to the merger. 75 percent of the operations of Consolidated Motor Lines lies in the territory of Massachusetts, Connecticut, and Rhode Island, the New England territory, and those operations are paralleled 95 percent by those of McCarthy Freight System.

Commr. ALLDREDGE. I did not get the name:

**Mr. WILFRED. McCarthy Freight System.**

The Western, or New York, Pennsylvania, and New Jersey operations of Consolidated, which constitute the other 55 percent, are paralleled 100 percent by those of the M. Moran Transportation Company, and these operations are likewise highly competitive.

Consolidated parallels Horton Motor Lines and Barnwell Brothers between New York and Philadelphia, and these lines are highly competitive.

Horton Motor Lines, which is one of the largest carriers in the merger, parallels a number of carriers parties to the merger.

Between New York and Philadelphia, in addition to Consolidated Motor Lines and Southeastern Motor Lines, Horton is in competition with Barnwell and with the last two companies, that is, Southeastern and Barnwell, between those points 890 and Baltimore, Maryland, and Washington, D. C. Horton's competition with Barnwell, however, extends into the deep south, and those operations parallel Barnwell's operations 95 percent, and the record discloses that they are very highly competitive.

Between Atlanta, Georgia, and Charlotte, North Carolina, Horton is competitive with Transportation; and the routes of the Arrow Carrier Corporation in eastern Pennsylvania parallel those of Horton, Moran, Consolidated, and Barnwell, in part. Arrow is the largest company operating in this particular territory.

Now, it is clear from this brief presentation of the distribution of these parallel routes that what is here involved is not an end-to-end unification of complementary operations, as the Examiner would have the Commission find, but the component parts of two competing motor-carrier systems, insofar as the major portion of the territory is concerned, one blanketing the other, which it is proposed be welded into one huge carrier, which would then become the largest carrier of its kind in the United States.

Now, the principal point of difference between the Examiner and the Division in regard to restraint of competition is that the Examiner deals with motor-carrier operations in the territory of the individual carriers concerned insofar as the operations 891 of those individual carriers are concerned, while the Division's view is that the test is: What competition would remain for the huge motor carrier here proposed to be created, extending from the Canadian border to the Gulf of Mexico?

Now, my time will not permit a detailed review of the evidence—and I would like very much to discuss an added element of restraint in this case, which has not been touched upon thus far—but briefly to summarize the evidence:

It shows that there is presently no motor carrier operating in this territory between the northern and the southern termini of the carrier here proposed to be created;

Further, that in connection with the long-haul traffic between the metropolitan area of New York and the Carolinas and Georgia there is no motor carrier of comparable size to either Horton or Barnwell; and the same dominant position exists in connection with short-haul traffic in New England—there is no motor carrier of comparable size to Consolidated or McCarthy; and the same is true with respect to the M. Moran Transportation Company in the New York area.

Finally, the record discloses that these eight carriers, six of which are the most prosperous, the best money makers in the business, if formed into one single carrier, would be ten times greater than any other carrier presently operating throughout the territory.

Now, the question might very reasonably arise whether  
892 or not out of the admittedly numerous local operations, and some regional operations, if a competitive system could not be created for the huge carrier here proposed to be formed. I think the record is to the contrary, and I think that the answer of Mr. Seymour to Commissioner Lee was very illuminating.

As we recorded that inquiry, Commissioner Lee inquired:

"And are there not many other people down there who are anxious to get into the business?"

And the answer of Mr. Seymour, as we recorded it, was:

"Big trucking companies, able to compete with applicant, are not built overnight. Nor can this Commission wave a wand and make one appear."

But I think that, perhaps the basic reason for the impossibility of creating a competing system to the carrier here proposed lies largely in the present relationship of the other carriers that have been left out of the merger, that is, carriers that operate regionally. We find that many of these carriers are owned by railroads. Take, for instance, the New England Transportation Company; they are owned by the New Haven Railroad. The Buffalo Storage and Delivery Company is owned by the Pennsylvania Railroad. The C. and B. Transit Company is also owned by that railroad. The United States Trucking Corporation is affiliated with several railroads. And then we find that the Seaboard Freight  
893 Lines, Inc., supplies the eastern connection for the east and west operations of the Keeshin Lines, being a wholly owned subsidiary of that company. Liberty Forwarding and Distributing Company is affiliated with Acme Fast Freight. Motor Express and Niagara Motor Express are affiliated with U. S. Freight Lines of Delaware. And so forth and so on.

There is nothing in this record to indicate such a possibility, and we submit that perhaps the characterization of Mr. Seymour is the best answer to such an idea.

Now, the Examiner makes a number of comparisons in the report, which I believe I should spend just a little time on. It is rather difficult to follow some of these comparisons from the standpoint of the relevancy to any issue in this proceeding.

For instance, he takes the operations of all the Class I carriers in the New England area, taking the six states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut, forty million dollars, and he would have the Commission compare that with the operations of Consolidated and McCarthy of some \$6,400,000. There is no pretense that these are competitive carriers. He just takes these Class I carriers in six states and compares them with the operations of McCarthy and Consolidated in three states. A similar comparison is made for the so-called Middle Atlantic region, and also for the southern region.

We find in the southern region that there are added the 894 states of Kentucky and Florida. There are no operations involved here that would extend into Kentucky, and the only operation that enters Florida is that of Transportation into Pensacola, a very short distance.

We submit that such comparisons are incompetent in so far as testing any theory of competition is concerned.

There are some other comparisons; however, that may be considered from the standpoint of existing operations of other carriers in other territories. The Examiner, in support of his theory that monopoly would not result from the establishment of this proposed carrier, takes Interstate, Keeshin, and United States Truck lines, pointing out that monopoly has not resulted from the operations of those lines in the territories that they serve. We submit that on this record if you combined those three carriers, Interstate, United States Truck Lines, and Keeshin, then you would have an operation comparable to that here proposed; or, conversely, if you left Horton or Barnwell out of this merger, and one of the carriers in the north, then you would have an operation comparable to either of those three carriers.

Now, we find here that two of the largest New York to Georgia and the Carolinas carriers are involved in this merger. Horton and Barnwell, and they are presently strong competing carriers; they form the backbone of this merger. If either of these two carriers had been left out of the merger, as well as either Consolidated or McCarthy in the north, there would have been a 895 nucleus around which to form a strong competing operation to the carriers that would then be in the merger. Thus there

would have been two truly end-to-end competing unifications. To insure that no such competitor could be formed, these carriers parties to the merger, together with Moran, by contract, have conditioned the consummation of the merger upon the inclusion therein of all these competing carriers.

Now, we submit that there is here sought and there would be obtained an unshakable hold on the long-haul motor carrier traffic in this territory, not only because of the extensive route coverage, but because of the tremendous drawing power of the carriers here involved.

Commr. MAHAFFIE. Does that contract cover Arrow's inclusion?

Mr. WIPRUD. It does not, Mr. Mahaffie. It includes Barnwell—

Commr. MAHAFFIE. Isn't it one of the competing carriers?

Mr. WIPRUD. They claim they are not competitors. They claim that they merely parallel these routes but that they are not in fact competitive.

Commr. MAHAFFIE. Do you agree with them on that?

Mr. WIPRUD. I do not, sir.

In the reply brief the applicant cites two motor carriers which they claim would be competitive with this operation from  
896 Boston to the deep south, Akers Motor Lines and Carolina Freight Carrier Corporation. Akers, as the Examiner states, is an irregular route operator with a gross annual volume of some \$911,000, and Carolina Freight Carriers with some \$385,000.

Now, referring back for just a moment, if I may, to the competition between the carriers parties to the merger and the elimination of 13,546 miles of parallel routes in the event the merger is approved, the Examiner makes this comment:

"The actual competition existing between the carriers involved is somewhat less than might be indicated by the duplicate highway mileage, by reason of the restrictions in the service they are authorized to render and differences in the nature of the traffic handled."

Now, thereafter he details the restrictions in operating rights and the nature of traffic of motor carriers parties to this merger, but, as the Commission will note, he applies no such test to carriers left out of the merger. We submit that if it is a proper test to apply to the carriers in the merger, it is a proper test to apply to the carriers not in the merger. The Division attempted to do so, in so far as the time and facilities permitted, but the Examiner makes no reference to the testimony of the Division. We believe that this is one of the glaring inconsistencies of the report. We feel that if it is to be applied to the carriers parties to the

897 merger, it should also be applied to the carriers outside of the merger.

The Division believes that the Examiner's report in this proceeding is as a matter of law at variance with the National Transportation policy in the two major particulars:

First, in his concept of the effect of the Transportation Act of 1940 upon the national policy of competition in the transportation field;

Second, in failing to apply a provision of the 1940 Act materially strengthening the national policy, which brings us to a consideration of railroad-banker relationship to this transaction.

Mr. Arnold has covered the first point; and, if the Commission please, I would like to direct the balance of my time to the second point.

Now, in our view this banking relationship of Kuhn, Loeb and Company adds an additional element of restraint in this case. The facts regarding this relationship are, briefly, as follows:

First, if this transaction is approved, Kuhn, Loeb and Company, through its wholly owned subsidiary, Transport Company, will become a substantial minority stockholder of Associated Transport, owning 6,877 shares or 18.13 percent of Associated's preferred stock, and 67,167 shares or 9.53 percent of its common stock. The preferred stock has voting rights share for  
898 share with the common.

Second, Kuhn, Loeb and Company has one of its office managers as director of Associated Transport.

Third, Kuhn, Loeb and Company has representatives on the Board of Directors of various railroads throughout the United States and has for many years been the banker for the Pennsylvania Railroad and Baltimore and Ohio Railroad, both of which serve the territory involved in the proposed merger, and which the applicant has shown by its exhibits are competitive with the carriers involved in the merger.

Fourth, it is denied that any arrangements have been made with Kuhn, Loeb and Company or any other banking house to handle the public sale of the securities to be issued. However, it is stated that the securities will not be sold at public sale but pursuant to private arrangement.

Now, the Division in its brief, prior to the proposed report, in connection with its consideration of restraint, pointed out this relationship of Kuhn, Loeb and Company to Associated Transport, and to these railroads; and again, in its exceptions brief the Division urges consideration by the Commission of this relationship, pointing out that control by Kuhn, Loeb and Company would in effect be control by those railroads.

Now, since filing the briefs the Commission has in a decision considered these interrelationships. This decision is a decision by Division 4 and involves the United States Trucking Corporation Purchase—William J. Kennedy. In that case it was shown that the United States Trucking Company was owned by the United States Distributing Corporation, a holding company, which in turn was owned by the Pittston Company, another holding company, which in turn was owned by the Allegheny Corporation—46 per cent of its stock; that is the third holding company—and then through various other relationships. The C. & O., the Nickel Plate, and the Pierre Marquette were shown to have some stock interest.

Now, the Commission has this very significant statement to make in connection with this interrelationship:

"The evidence submitted by applicants is not sufficiently complete to determine whether or not Allegheny Corporation"—that is the third holding company—"still has the power to control C. & O., although the large stock ownership of the former in the latter would indicate a substantial interest and a close relationship. If it does have such power, it would appear there could be little question that it and C. & O. together have the power to control United by virtue of their stock ownership in Pittston. With such power to control existing, the proviso of Section 5 (2) (b) would unquestionably be applicable to this transaction. The fact that C. & O. has not actively participated in the management of United, which the parties apparently rely upon to negative the fact of control, is immaterial, as such circumstances would merely indicate present satisfaction with the manner in which the affairs of United are being conducted by the directors and officers who are managing the operations.

Assuming the power to control United does not lie with the Allegheny Corporation-C. & O. combination of interests, it seems apparent that such power does not lie with any other stockholder or group of stockholders of Pittston. C. & O. owns 38.40 per cent of the outstanding voting stock of Pittston. This block of stock, bearing in mind the fact that Allegheny Corporation owns 23.36 per cent of the common stock of C. & O., would, in most situations, be sufficient to constitute power to control Pittston and United." And therefore the United States Trucking Company was held subject to the railroad proviso.

COMMR. MAHAFFIE. Now, the other stock was somewhat scattered there, as you just read.

MR. WIPRUD. That is correct, sir.

COMMR. MAHAFFIE. In this case will Kuhn, Loeb and Company be the biggest stockholder?

Mr. WIPRUD. Kuhn, Loeb and Company will be a substantial minority stockholder, Mr. Commissioner Mahaffie.

Commr. MAHAFFIE. Will any other single interest rival theirs?

Mr. WIPRUD. The Horton Motor Lines will have about 901 38 percent. Kuhn, Loeb and Company will have about— as far as voting power is concerned—I think about 10 percent.

Commr. MAHAFFIE. Now, will anybody else be greater in voting power than Kuhn, Loeb?

Mr. WIPRUD. As I say, the Horton interest would be about 38 percent.

Commr. MAHAFFIE. Anybody else besides Horton?

Mr. WIPRUD. I think not, sir. I think it would be the largest single block. There may be—You mean a larger stockholder between Kuhn, Loeb and Horton?

Commr. MAHAFFIE. Yes.

Mr. WIPRUD. I would have to check that.

Commr. MAHAFFIE. What I am getting at is whether the precedent you have cited is a real precedent or not. In that proceeding it seemed that there were pretty substantial blocks of voting power in the hands of these two concerns and that the rest was scattered.

Mr. WIPRUD. May I answer that this way, Mr. Commissioner: The provision in the 1940 Act to which I referred, and to which the Commission gave full consideration here, was Section 1 (3) (b) of the Interstate Commerce Act, which broadened the definition of "control." Now, the Committee Report shows that the broadened definition related specifically to the decision of the Supreme Court in Rochester Telephone Company v. United 902 States. Now, in that case the Supreme Court sustained an order of the Federal Communications Commission, wherein it was shown that the New York Company owned only one-third of the stock of the Rochester Company. In other words, the Congress adopted a definition of "control" having been fully informed of the concept of the Supreme Court in the Rochester Telephone Company case.

Commr. MAHAFFIE. Wasn't that, Mr. Wiprud, on the theory that the holding was large enough to be a possible controlling element? One-third was larger than anybody else, and the holding was that it had the power, in view of the scattered holdings of others, possibly to control.

Mr. WIPRUD. Mr. Commissioner, I haven't in mind the division of stock, but there were larger stockholders than the New York Company. There was a scattering of stock in that case, but they had in all one-third of the common stock, and it was held that, because they had a minority stock interest, they could

control, and the Supreme Court said that the Commission had a right to take that into consideration with the surrounding circumstances.

Commr. MAHAFFIE. You say in this case there were holders larger than the one-third?

Mr. WIRUD. I would have to check what the distribution of that stock was.

The point I make is this: Here was a substantial minority interest, which the Court said the Commission had a right  
903 to take into consideration with the surrounding circumstances.

Now, what we would urge the Commission to do here, as I shall point out in a moment, is to consider that relationship.

Here is all the Examiner says about it. He says:

"Ownership by banking houses of minority interests in carriers of itself has not been demonstrated to be inconsistent with the public interest."

But he fails to note the important point, and that is that one of the investment banking houses is one of the two largest railroad bankers in the United States, and that they have been bankers for the Pennsylvania Railroad and the B. & O. Railroad for many years.

Commr. MAHAFFIE. Do you think that has eliminated competition between the Pennsylvania and the B. & O.?

Mr. WIRUD. I think, sir, that that is the type of relationship which the enlarged definition of "control" was adopted for, and that the Commission should consider that relationship. They can't ignore it. That is a matter of which consideration can readily be eliminated by a banking house that has a substantial interest in a competing form of carriers.

In this view, then, there is involved the proviso of Section 5 (2) (b), which relates not only to acquisition of or interest  
904 in, motor carriers by a railroad but also by persons or corporations affiliated with a railroad.

Now, we are not left in doubt as to what an affiliate means. It is defined in the statute.

Now, to paraphrase the section, the issue of fact, then, would be whether, by reason of the relationship—and the Act does not say "stock interest"; it says "relationship"—of Kuhn, Loeb and Company to the Pennsylvania and the B. & O. railroads, it is reasonable to believe that the affairs of Associated Transport will be managed in the interest of those railroads.

This would, of course, involve a consideration of whether, if a conflict of interest should arise between these railroads and this motor carrier, Kuhn, Loeb and Company would or

could use the weight of their influence against the motor carrier in such manner as to further restrain competition.

Therefore, we respectfully suggest that the Commission examine this situation to determine, first, whether the relationship of Kuhn, Loeb and Company to the railroads, competitors of these motor carriers, constitutes affiliation with such railroads within the meaning of the Act; second, whether the substantial minority stock interest of Kuhn, Loeb and Company, under all the circumstances surrounding this transaction, including the fact that no single person or corporation owns a majority of the voting stock of Associated Transport, constitutes, or can  
905 constitute, control of Associated Transport; and, third, if so, whether sufficient evidence has been adduced to sustain the required statutory findings under the proviso.

We believe that if such examination is made fully into this case, the same conclusion must be arrived at as in the United States Trucking Company case. Thank you.

Act. Chrmn. ARCHISON. Mr. Donoho.

906 Argument of Mr. HASKELL DONOHO:

Mr. Donoho. May it please the Commission:

The Secretary of Agriculture did not enter this proceeding until after the hearing and after the date fixed for filing briefs had passed. Therefore, in his exceptions to the Examiner's report he did not enter into any extensive arguments on the technical aspects of this case, nor shall I here in oral argument. Those arguments have been made, or will be made, before this oral argument is completed, and I do not think that I can add anything to them. I do wish, however, briefly to discuss one aspect of this case, which, in the opinion of the Secretary, is of great potential importance to the agricultural interests of this country.

The interests of American agriculture in preventing monopolistic control of transportation are obvious. Historically American agriculture has been in the forefront among those who have through the years fought monopoly. This Commission owes its existence, in large measure, to the agrarian revolt of the 70's against intolerable abuses growing out of railroad monopoly. Through the functioning of the Commission, railroad monopoly was controlled, but it was only with the development of the inland waterways and, more particularly, the free highway systems, that the railroad monopoly was broken. American agriculture led the fight for the development of the free highway systems,  
907 and the benefits derived in terms of lowered transportation costs through competing transportation facilities have been considerable.

As I have stated, the development of free highways and the concomitant growth of the motor industry has given American agriculture the advantage of competing transportation facilities. It is because, through the participation of the banking house of Kuhn, Loeb and Company in this proposed merger, we detect a precedent which may ultimately result in the destruction of this competition that the Secretary has intervened in this case. I will briefly discuss this point.

It is submitted that the Examiner's conception of the implications of the minority ownership of Kuhn, Loeb and Company in this proposed merger is, to say the least, superficial. It has been pointed out that, following the consummation of the proposed merger, there will be nothing to prevent Kuhn, Loeb and Company from acquiring control of all the capital assets of the merger.

COMM. MAHAFFIE. If the Arrow Company were eliminated, would you have any objection then to the proposal?

MR. DONOHU. I will say this, Mr. Mahaffie. In our exceptions we stated that we were doubtful of the benefits to Agriculture—or, rather, that we feared for agriculture because of the merger of the motor truck lines themselves in that we feared it would destroy competition among the motor carriers. However, I will say this, that our principal fear in this case is because of the participation of Kuhn, Loeb and Company.

COMM. MAHAFFIE. I gathered from your statement a moment ago that you would not be here if the Arrow Company were not here.

MR. DONOHU. I think that is a fair statement; yes, sir.

Regardless, however, of whether Kuhn, Loeb and Company ever secures ownership of a majority of the assets of the proposed merger, it would be a naïve viewpoint, we believe, which would deny the serious possibility that Kuhn, Loeb can secure control of the operations of the proposed merger.

Students of business structures of this country are aware of the fact that in recent decades there has been a notable divorcement of ownership and control in American business concerns. Mr. Wiprud pointed to the case of Rochester Telephone Company v. United States, where the Supreme Court gave recognition to this divorcement. I might refer also to the study of Berle and Means, the "Modern Corporation and Private Property," where this fact is conclusively demonstrated. The all-important elements underlying control of most large concerns are the intangible factors of organization, managerial competence, financial interrelationships in the general business structure, and those intangible but vitally important factors growing out of strategic com-

mercial and business relationships. The existence of these 909 factors are economic realities which must be considered in any intelligent appraisal of actualities; and, it is submitted, it does not require great acuteness to see wherein, within the component parts of this proposed merger, the preponderance of these factors lie. It seems to us that they all lie with Kuhn, Loeb, with the possible exception of managerial competence, and that is something that can be bought.

Kuhn, Loeb and Company is the banker for the principal eastern railroad lines. They now propose to become a minority owner of the principal motor carrier in the east. The very fact that there was no railroad opposition to this proposed merger—

Act. Chrmn. AITCHISON. Who is becoming a minority stockholder?

Mr. DONOHU. Kuhn, Loeb and Company.

Act. Chrmn. AITCHISON. But I thought you said the eastern railroads.

Mr. DONOHU. No, sir. If I said that I did not mean to.

Act. Chrmn. AITCHISON. You said "they." I did not know who you meant.

Mr. DONOHU. Perhaps "they" did not relate back properly. Thank you for the correction.

The very fact that there was no railroad opposition to this proposed merger seems to us to indicate, at least to make 910 reasonable the proposition that, either through later acquisition of capital assets or through one of the many devices and mechanics of minority control, the railroad banking house of Kuhn, Loeb and Company will, in effect, control the operations of this proposed merger.

Commr. MAHAFFIE. By the way, the States also were asked for their representations in this matter. Has any State opposed this merger?

Mr. DONOHU. Not that I know of, sir.

Commr. MAHAFFIE. How do you account for that?

Mr. DONOHU. I do not know, except that with respect to our participation here we were not apprised of the implication of this case until the Examiner's report was almost ready to come out. That might be true of the various State commissions.

Commr. MAHAFFIE. Well, they were served with copies of the application, of course, and asked for any representations they cared to make.

Mr. DONOHU. I just couldn't answer that, sir.

To deny that such control, iff the event that such control is established, will destroy competition in eastern transportation is, it seems to us, to forget the plainest lessons of transportation history and to ignore time-honored financial methods.

We are sincerely fearful that the consummation of this proposed merger with the railroad banking house of Kuhn, 911 Loeb and Company as a component part will result in an effective cartelization of rail and motor transportation in the east. To American agriculture this is a result to be feared.

That completes the principal point that I wished to make.

I would, however, like to make one brief comment respecting an observation of one of the gentlemen arguing for the proponents of this merger, where he stated that the requirements of National defense would be better met by this proposed merger. It just seems to me that I should say there that, due to our new defense organization—and I am speaking of Mr. Nelson's office and Mr. Eastman's office—I am sure that cooperation—if you could use that term—could be forced to achieve the same results that this proposed merger would as far as the efficiency of utilization of material and equipment, and so forth, is concerned.

Commr. LEE. Would this proposed merger be more efficient if Kuhn, Loeb and Company were out of the picture?

Mr. DONOHO. Well, I would think, sir, if this is going to make for more efficient operation, it would be a more efficient competitor of the railroads.

Act. Chmn. ARCHISON. Well, if that was the case you would not be here, would you? The Department of Agriculture is interested in keeping your transportation costs as low as possible, aren't you?

912 Mr. DONOHO. That is entirely right, sir; and we are here only because we are fearful that through the participation of this banking house there will be a destruction of this competition between rail and motor carriers.

Act. Chmn. ARCHISON. And therefore the transportation costs would be higher.

Mr. DONOHO. Yes, sir.

Act. Chmn. ARCHISON. Will the costs of this consolidated company be higher?

Mr. DONOHO. Sir?

Act. Chmn. ARCHISON. Will the costs, or expenses, of this consolidated company be higher?

Mr. DONOHO. I assume not. But we are fearful that if it is controlled by railroads that the costs will be immaterial.

Act. Chmn. ARCHISON. You are quite aware, are you not, that our main problem up to the present time has been to establish a base rather than a ceiling for motor carrier rates?

Mr. DONOHO. Yes, sir; I am. In summary I might say that we are fearful of this participation. We may be seeing things under the bed. I don't know. I sincerely hope that we are. But we

would like to ask the Commission to consider very carefully these factors in this case that make us fearful. They are rather intangible and amorphous and hard to evaluate, but we do think

that under all the circumstances of this case they are worthy of serious consideration on the part of the Commission.

Act. Chmn. AITCHISON. Mr. Campfield.

913 Argument of Mr. W. S. CAMPFIELD:

Mr. CAMPFIELD. May it please the Commission, "as a representative of the Virginia State Horticultural Society, and other fruit growers associations in the Appalachian district, as set out in the petition of intervention dated September 30, I come here to request the Commission not to grant this application, for the reason or the reasons that have been so ably presented here today, which I will not go into, more ably presented than I could, and therefore I am going to confine myself mainly to but one phase of our objection, endorsing those that have already been made.

If this consolidation is allowed, I believe that it is but the fore-runner or pilot case of applications that will cover the principal highway routes of the entire United States. I think that is inevitable. There will be other cases like this as soon as this gets through, and then will arise the danger which we fear. By "we" I mean the fruit growers and agricultural associations. I believe that out of that will come an organized, concerted, high pressure movement in Congress by these United truck line trusts, plus the railroad lobby, which is one of the most powerful on the Hill, as I happen to know, for an amendment in the law or regulations for this Commission to eliminate the small, independent, for-hire trucker and the privately owned truck from the highways over which these associated or franchised lines

915 would operate.

I thoroughly believe that that is the picture for the future, because I have been delving in this truck and railroad competition fight since 1929, and I know what some of their plans are. I knew that just such a probability as this was in the planning when this law was passed through Congress.

Now, the franchise lines are of little value to the fruit grower and to the producer of all perishables so far as the movement of their crop is concerned from the farm to the markets or storages. We do not ship that way.

COMMR. ALDREDGE. You mean by "franchised" common carriers?

MR. CAMPFIELD. Yes. These people sitting here. I call them franchised lines. If that is wrong, I will call them common carriers.

Because the perishable crops are produced in volume usually over a very short season—peaches, for instance, only about ten days or two weeks; other crops perhaps a little longer time—requiring heavy tonnage at that time, and a sudden call for movement, a few hours delay may mean the difference between a loss or a profit. Therefore, the small grower up through our area finds that a neighboring truck owner, who may be a farmer who has a for-hire license, or a contract license, as we term it in Virginia, and who is not busy with his truck on his farm at 916 that time, may be called in that night to pick up a load of peaches and start for town, or in the more concentrated area, immediately. The fleet of for-hire truckers are available and move in with a sufficient number of contract trucks to keep that movement going continuously day by day. That is where we get our service. Now, if—

COMM. ALLDREDGE. Do they go into the orchard?

MR. CAMPFIELD. Right from the packing shed and deliver it to the cold storage of the buyer. That is of great value.

Now, if these consolidations are allowed, and if they should follow the line that I fear, and there would be a tightening down of the regulations, and ultimately the elimination of those trucks, the perishable-fruit industry, whose perishables must be moved quickly, would be at the mercy of these common carriers, and they simply can't handle the movement as it is handled now, without a complete reorganization, and we are afraid of that.

COMM. ALLDREDGE. Do you fear that these trucks you talk about would be legislated off the highway?

MR. CAMPFIELD. Yes, sir. Yes, sir. I do fear that.

Now, I want to call attention to a fact that the motor trucks, by virtue of their very nature, are a short-haul vehicle. The railroads, through their present organization, interchange of equipment, and so on, are very highly and efficiently organized for short and particularly for long hauls. Now, we need the railroads. I do not think any one will deny that. We have 917 got to have them. So why should we take steps that would encourage competition for the railroads in this long haul. The trucks have nearly got the short-haul stuff. They are hauling from 50 to 75 percent of the fruit and produce today in short hauls. I think our last data in Virginia shows they moved about 70 percent of the apples from the orchards to the markets, all markets, and to the cold storages. Now, the railroads have been greatly injured by that short-haul business, and I think we should not do anything to discourage the long-haul business, or we will find nothing left for the railroads but long hauls dead freight.

I know somebody will ask, "Why aren't the railroads here protecting their own interest?" I think they are. It is my candid opinion they are here protecting their interests. I have had a chance to study stock control of various companies. I do not believe Kuhn, Loeb ever goes into anything financially very deep unless they know where the control is. I don't think they do. I may be wrong.

Now, transportation is the life blood of industry. The farmer wants an easy, quickly obtainable, economical, and flexible service. Is my time up?

Act. Chrmn. AITCHISON. No. You go on to the red light.

Mr. CAMPFIELD. There is just one more point I want to  
918 bring out.

Now, I believe that unquestionably the small trucker is in a better position to give that service than the large one, and a more economical service, and as proof of that, I want to read from the petitioner's reply to exceptions, on page 6. He has already brought up some difficulties, that the large lines are caught between three-fires. The second of these is:

"Because they are among the comparatively large lines in an industry of small units, the demands placed upon them by the shipping public with respect to quantity and quality of service grow constantly more meticulous," and so forth.

"Third, in the face of these demands, which they are not financially and physically able to meet, they"—meaning the applicants in this case—"are sniped at, raided, and invaded by smaller lines with less overhead which in the past, having more territory than they could adequately serve, have now, through increased profits, brought about by specialized movements and increased tonnage, multiplied their competitive efforts for more business."

Exactly the point I am trying to make.

"Many lines, formerly very small, have grown substantially through mergers or acquisitions so that they are becoming new factors in many territories, and, through their greater flexibility  
919 resulting from smaller size, skim the cream of the business."

Now, that is the kind of service we want to protect, and that is the kind of service that I believe the small-trucker is in a position to give.

In closing let me say that it certainly would be against public policy to start any movement or grant any applications which might lead to a monopoly of the public highway system. Thank you.

Act. Chrmn. AITCHISON. Mr. Woods.

## 920 Argument of Mr. WARREN WOODS:

Mr. Woods. My name is Warren Woods, of the firm of Roberts and McInnis, appearing here as counsel for Super Service Motor Freight, a protestant, at the hearing and here, to the inclusion in the proposed consolidation of the Southeastern Motor Lines.

After listening to the learned arguments of many distinguished counsel, it is with just a little bit of temerity that I am about to present to you our interest, which is only incidental to these broader questions of public and statutory policy which other counsel have referred to.

We are, however, vitally interested in one question, which we believe is equally important, particularly so if you judge the frequency of its reference in the decided cases. That is the question directed by Commissioner Alldredge to Mr. Sullivan during the argument of Mr. Seymour with reference to a consideration of the status of rights of carriers in a finance proceeding. Mr. Sullivan, I believe, gave a much too general answer to that question when he said that the status of operating rights is not considered in finance cases.

Certainly, where questions of the jurisdiction of the Commission are involved, as, for example, those decided in the Lavine case, and later followed in other cases, the question of whether or not rights have been abandoned is involved in a finance case. Certainly in the case of an interested registered operator attempting to convey or to purchase rights the status of rights is involved; and certainly by other decisions of the Commission, where it is sought to use in an application for a certificate of convenience and necessity as consideration in the transfer of rights, the status of rights is again involved. And we submit, finally, of course, that where there is small likelihood of rights claimed only by application, as to which the Commission has already acted adversely, are present, the purchase price may well be quite excessive unless the probability of the confirmation of such rights is considered by the Commission in the case.

Now, briefly referring to the specific facts here, the Super Service Motor Freight Company is an operator whose routes run between Nashville, Tennessee, and Philadelphia, Pennsylvania. It has pending now a purpose application for certain rights between Philadelphia and New York City.

COMM. ALLDREDGE. What is its present route?

Mr. Woods. It goes through Knoxville, Bristol, Roanoke, Winchester, and on into Philadelphia. Its routes in general parallel the routes operated by Southeastern at the present time.

Now, considering Super Service's position here, it is necessary to go to the sources of the claimed rights of Southeastern. Southeastern came into existence as a motor carrier by incorporation some time during the year 1938. The sources of its rights are two. First of all, it claims the right to operate between Nashville and Knoxville as a result of successorship to certain rights owned by Hoover Motor Lines, which, in turn, Hoover claimed from a partnership known as Jacobs Motor Service.

Act. Chrmn. AITCHISON. Sort of an inherited monopoly.

Mr. Woods. Commissioner, I am not referring to monopoly; I am just saying an inheritance.

The original rights of Jacobs—I will put it this way: Jacobs began business operating between Nashville and New York City over what were in essence irregular routes prior to the grandfather date, sometime during the month of April, 1935. They were fined by the State of Tennessee and ordered to stop operating because of a violation of state laws. They abandoned their operations until after the grandfather date, resumed some time in January, 1935, operated sporadically one or two or three trips a month until February of 1936, when they abandoned all operations completely. They sold at a later time, after a certain period of abandonment, whatever rights or claimed rights they might have by virtue of this irregular operation between Nashville and New York City, to Hoover. Hoover in a finance case in which that sale was involved was granted by the Examiner, and by Division 4, only a divided right from Nashville to Knoxville, was not given any rights from Knoxville into New York, and despite the fact it was given that right—permitted to buy the rights between Nashville and Knoxville, despite the fact of proof and admission on the record, and later in argument before the Commission, of actual abandonment for a period of better than a year of the Knoxville to Nashville operation.

Now, here we have Southeastern coming into possession of its claimed rights between Nashville and Knoxville only by virtue of its successorship to these rights Hoover may have had there. We have further a convenience and necessity application on file by Southeastern, which is still pending before the Commission.

Commr. MAHAFFIE. I am not quite clear. Does your argument go to the theory that the Lavine case governs this and we have no jurisdiction over the acquisition of Southeastern, or merely that the price to be paid is too high in view of its dubious character.

Mr. Woods. It goes to both, Mr. Commissioner. First, that under the Lavine case Southeastern has no rights between Nashville and Knoxville which it can convey.

Commr. MAHAFFIE. It has other rights, hasn't it?

Mr. Woods. Now, the rights from Roanoke to New York City, it was admitted by their testimony at the hearing, are restricted. They cannot pick up or deliver north of Roanoke  
924 all the way into New York City.

Commr. MAHAFFIE. You do not claim it is not a motor carrier under Section 5, do you?

Mr. Woods. Yes, sir; we do in our brief. We have argued there, under the Maher case, that the claimed rights of Southeastern between Knoxville and New York City were acquired from Hoover and were, in fact irregular routes, later converted into regular routes; and that case also has not yet been finally adjudicated by the Commission, and there is no certificate to this date which has been issued to Southeastern Motor Lines.

So, in effect, we are claiming here that the proposed merger cannot obtain these rights between Knoxville and Roanoke; that Barnwell Brothers already have unrestricted rights from Bristol to New York City; and that Associated Transport is paying an excessive price for a small and unimportant right which may possibly in the remote future be confirmed in Southeastern to operate between Knoxville and Bristol, Tennessee.

Commr. MAHAFFIE. Well, have you anything—your Super Service Motor Freight, Inc., or whatever your client is—any other interest in the matter of principle than what is done as to the price?

Mr. Woods. Yes, sir; we have. We are only incidentally interested in the monopoly consideration that other counsel  
925 have referred to; but in so far as it is possible, perhaps from a commercially selfish angle we do not like to see what appears to us to be a huge competitor coming down into our district, and perhaps during the two years longer that it may be able to delay final judgment in Southeastern, which we think will be determined against Southeastern, perhaps drive us out of business. We think that the Commission should in this case decide that Southeastern has no rights from Nashville to Knoxville because they were abandoned.

Commr. LEE. In this case you think we should determine that?

Mr. Woods. Yes, sir; on the principle of the Lavine case.

Commr. LEE. There is nothing in the record here from which we can reach that conclusion, is there?

Mr. Woods. Yes, sir; there is.

Commr. LEE. In this case?

Mr. Woods. Yes, sir; through the testimony of Mr. Brock; also by reference. All you have to do is to go to your own dockets, look at the Examiner's reports, and look at the records which are before the Commission in this case.

Commr. MAHAFFIE. Well, there is no claim here that the entire operating rights of Southeastern was abandoned at any period, is there?

Mr. WOODS. Not abandoned, not; not entirely.

Commr. MAHAFFIE. And Southeastern is an operating company now; is it not?

Mr. WOODS. It is an operating company now; yes, sir.

Commr. MAHAFFIE. Then, how do you represent that on the basis of the Lavine case we are without jurisdiction?

Mr. WOODS. Because the only rights which Southeastern claims even between Knoxville and Nashville, Tennessee, we claim are shown to have been abandoned.

Commr. MAHAFFIE. Well, that is only a part of its rights.

Mr. WOODS. That is correct, sir.

Commr. MAHAFFIE. How does the Lavine case apply to that?

Mr. WOODS. Well, the Lavine case would certainly apply in moving that portion of the rights out of the picture here, so that the consideration must be regarded as applying only to claimed rights between Knoxville and New York City.

Now, in closing, I should like to point out again that the contract involved here does not make the inclusion of Southeastern in this merger an essential feature in the approval of the merger. Section 15 of the contract names only five corporations as being essential to the consummation of the transaction. Southeastern is not one of those five corporations.

Act. Chmn. AITCHISON. In the argument list we find Senator Shipstead and Senator O'Mahoney down for fifteen minutes apiece. We are informed that a War Bill is on the floor and that Senator O'Mahoney is in charge of it and he does not expect to be able to reach here until sometime after four. The applicants have the remaining thirty-eight minutes. Will it be satisfactory, under the circumstances, for Senator O'Mahoney to follow the applicants?

Mr. SULLIVAN. I think so.

Act. Chmn. AITCHISON. Then, you may proceed.

Mr. SULLIVAN. Then, Senator Shipstead, what about him?

Act. Chmn. AITCHISON. Well, I put him in the same class, when he comes.

Mr. SULLIVAN. I see.

Act. Chmn. AITCHISON. I have had no direct word from Senator Shipstead subsequent to his reserving the time.

928 Argument of Mr. MORTIMER I. SULLIVAN in rebuttal:

Mr. SULLIVAN. Mr. Chairman and Gentlemen of the Commission:

I am gratified. When you were addressed by Mr. Arnold, he at least relieved us of the responsibility, along with the Examiner, of attempting to follow German precedent. It is substantially the only thing that we have not been accused of since the commencement of this application.

Now, I want to say to you gentlemen at the beginning that we have been hard put to find some way of establishing our sincerity to the people that have seemed to surround us and harass us in every step we have taken since the beginning of this case.

We resorted to giving up whatever benefits or detriments lawyers' arguments might have in our direct presentation in order that you might have an opportunity to look at some of the principal parties to this application, to see them with your own eyes, and not through whatever veil of mystery or flattery or build-up lawyers might be able to give them. I myself speak at least partly as a truck man to you when I make my remarks, and if at least one of our briefs sounds, when you go to read it, a little, as Mr. Arnold said, as if somebody was having apoplexy, it is because these things have been very close to us. Not in a financial way—because all of us here have seen these companies, and we  
929 have been a part of them as they grew up from little operations that we have heard so much about today to more substantial operations—and it is as if somebody were trying to kidnap our children to hear the things said about us—about our deep, dark, mysterious plan, our conspiracy with Kuhn, Loeb and Company—and we have not practically been on speaking terms with them for nearly a year. So, no matter what we seemed to have done, to have thought, to have tried to do in this application, it has not pleased somebody.

Mr. Campfield, from the Fruit Growers Association, almost seems to complain that it is our plan to do damage to the railroads by seeking to get some of the railroads' business; and yet, on the contrary, we are part of a conspiracy in which the railroads can guide and control this company.

Perhaps we should have known better—I don't know—than to have attempted to acquire any interest in what we regarded as a sound substantial transportation system. Perhaps we should have kept away from Arrow Carrier. That did not occur to us. It gave us plenty of headaches. It has cost us plenty of money.

COMM. SPLAWN. Mr. Burchmore raised a question which I would like you in the course of your reply to comment on, and that is the possible capitalization here of the price that you are getting.

He indicated that four shares of common stock might be felt  
930 to be worth a hundred dollars, as much as the preferred share. That would be twenty-five million dollars, wouldn't

it? What was the basis for that supposed exchange of four shares of common for one of preferred?

Mr. SULLIVAN. I think I can answer that both directly and indirectly in this fashion: Contrary to those things that have been said about us in briefs, in addresses to clubs, and on the radio, we are really very simple people, Mr. Chairman. That conversion price that was set up in the charter, when the charter was drawn Mr. Claude Cochran reached into a hat, in effect, and pulled out a twenty-five dollar share, that conversion price being as good as any other conversion price that I suppose he could think of, and that was the conversion price. We make the statement in our reply brief that if the Commission, or Mr. Burchmore, wants some other conversion price, if anybody wants to name it, it is all right with us. Presumably if we had made it ten or fifteen dollars we would have been met with the same sort of argument. If we had made it five dollars we would have been met with an argument in reverse. We simply picked that. And it is a difficult thing to argue about, because I can't say what it is today. Obviously, if by some flight of fancy that price was reached; yes, the thing would be worth twenty-five million dollars. We might have picked fifty or one hundred for that matter; then it would be worth several hundred millions of dollars.

93f I want to say this: We did not pick Delaware to draw this charter. We did not put these companies together. We did not pick these seven companies that are in this merger, or the eighth company, Arrow, because Kuhn, Loeb thought it was a good idea. We did not consult their attorneys. This was done by seven operators, or their representatives, and the application that was put before you was an application which we say if it bears any resemblance to the Transport case of last year, bears that resemblance because we burned plenty of midnight oil and we consulted innumerable times and at hours of length, and we produced this application out of practically, sweat, blood, and tears, and we hoped that it might have the blessing of the Commission.

Now, if I were a politician—and you know you almost get to thinking queer things as you run into this sort of opposition—I suppose we would not have argued at all. We would only have gotten the Senator whose constituents we are; maybe we could have found some societies or industrialists who would come in here and, having use for our trucks, present arguments for us.

And I do not propose to go into arguments as to what the laws were in Germany, as to what the result of the cartel plan in Germany was. When Mr. Arnold presented his argument, talking

about the cartel plan in Germany, there flashed through my mind for a moment that someone might feel that we are  
 932 doing an un-American thing here, if there could be any resemblance to transportation in Germany. But I do say to you, it is interesting to hear the argument and the advocacy before you to the effect that, as opposed to a cartel plan, which in effect was a pooling of resources, that we can do the very thing: Instead of merging our assets—as you do in a free country of your own free will, that we can do it in one of two ways:

\* One, as Mr. Arnold suggested, by interchange of our equipment with other carriers, and no matter how large the damage—that is where we are uncoöperative. If some other fellow takes our equipment and smashes it up, and we don't like it, then, as I understand it, we are uncoöperative. So I hear it advocated by Mr. Arnold, and certainly by Mr. Donoho, that the way to resolve our difficulties of trying to get a reasonable geographic spread, so that carriers in one part of the country won't put you out of business, so you could get the advantages of giving the shipping public the through movement of freight—I hear it said that it should be forced on our neck, and that the Commission should have the power to say, "Mr. Horton, you take your equipment, your nice, shiny, privately insured equipment, and turn it over to a line which you know nothing about. Let them dash it to pieces." At least Mr. Donoho says under the emergency and for the good of the country we ought to be made to do those things. I say

933 to you, Mr. Commissioners, that for the good of this country every man here has been using his assets to the last of his ability; that we are pooling freight; we have disrupted our schedules; we are running without thought of profit; we are pulling hundreds of thousands of cargoes for the United States Army, and paying insurance premiums that take 90 percent of the money the Government pays us. And I say we are trying to make possible, so far as we can, the expedition of freight, and doing the best we can until such time as we hope you will make it possible for us to do it in the way we know how, and not starving to death in this business.

Now, there is talk about we ought to go on in the same way as we have in the past. That is not a possibility. One look at the tax laws shows what happens. If a company could make a hundred thousand dollars in a year, the Government gets fifty thousand dollars of it; and the other fifty thousand dollars you don't even see, because if your business is improved—

Commr. SELAWN. Would that be changed by this grouping?

Mr. SULLIVAN. Yes; it will, sir, for this reason—and I am glad that you asked the question. If we can obtain the million and a

half dollars that we have calculated, then under those circumstances, with that much money, we can pay up the obligations that we presently have to meet out of depreciation. We can use the money to set aside for maintenance and repairs.

934 And once we put these things on a sound footing, then if the Government takes half, or sixty, or seventy percent of our profits, we have at least gained two things:

One, we know that if we run into a period of loss, at least the Government would also have to bear 60 percent of that loss, and so it doesn't seem so bad; and,

Secondly, the forty or fifty or sixty percent of the profits, whatever there is left, comes to you at least as cash, and not in the form of a truck that you have got to use for five years before you have got the cash. And so I say the picture changes overnight. It becomes a different picture. And when you have at least reached the stage that these lines have reached you are anxious and desirous to do it, because that is the next forward looking thing to develop a transportation system—not a company, but a system of truck transportation, that you feel you have been a part of.

Now, I am not going to stand here and argue this question of Kuhn, Loeb and their relationships with the railroads. That is a matter which you gentlemen will have to determine. You have to determine, of course, the whole case, but you have to weigh those arguments. We do not feel under an obligation to Kuhn, Loeb to any extent that would require us to press that argument.

I do say to you that it apparently was the cause of a very great deal of opposition which we have received. It made

935 this case—at least it made it take on prominence in the public eye, and it made it an attractive sounding board for the Anti-Trust Division to present to you gentlemen and to the world their views of truck transportation. I suggest that that should not be sufficient to have you lose track of the fact that, as a company goes, this is not proposed to be a large company. It is going to have assets somewhere around five-million dollars. It is not going to be a great octopus, reaching over the country. The record will be in front of you. You will have a chance to examine it.

I suggest there are two theories of regulation. We are before a body that is supposed to be experienced in this case, and is experienced and knows how to weigh the testimony. The Examiner took six weeks to decide the case, and he must have made a thorough and exhaustive check. We presented to you the best evidence we could on the subject of remaining competition.

COMM. MAHAFFIE. Did the Examiner take six weeks after the briefs were all in?

MR. SULLIVAN. I think it was close to that, sir.

If there was anything wrong about the exhibits that we submitted, there was plenty of opportunity to check them. The detailed findings of the Examiner confirm our contentions throughout the case.

It is one thing to look at a map like this and say, "Well, 936 look at the competition. Who is going to have a system like that?" The answer is, "The truck business." For example, in New York State your competition is the man who runs mostly within the confines of that state. In Pennsylvania, you have the same situation. In New England, the same. And so on throughout the south. There is some over-the-road business that flows through those territories. But they are only the tail that we should not allow to wag the dog.

Now, we are not going to be strapped into standing here and arguing a philosophy of regulated monopoly. We tried this case on the theory that what we were dealing with was a Commission viewpoint, at least to this date, that extends and accepts only a theory of regulated competition. We tried to put together a case which met the test of regulated competition. And we say that we have met the test of regulated competition. And while Mr. Arnold perhaps suggested that truckmen are rabbits, including us, we rather think that we are being used as guinea pigs for the purpose of determining what the Commission's views are on the subject of regulated monopoly in the transportation field, because you only move to any theory of regulated monopoly in this case by first saying this is a large merger; by next saying, as they have done, that Kuhn, Loeb and Company, having an interest of something less than ten percent of the whole, and being somewhere a third or 937 fourth stockholder down the line, if the Arrow were ap-

proved, are going to dominate this business; and then you have to move from there into the proposition of the railroads coming along, and that between the railroads and the trucks we are going to be built up to the point where we are going to move all other truck lines off the highway; and from there you get into an argument where you have to say, "Well, all those things being assumed, if we approve this merger, it must be regulated monopoly."

Now, we ask that you examine the record in the Examiner's findings; that you compare them with the exhibits that we presented; that you compare them with the sort of testimony that was presented by the Anti-Trust Division on that subject—testimony which was taken, not from your records as to certificates and operations in the territory, but from the one and two-line answers, and the financial report of Class I carriers, and the question as to what part of your territory or routes, and so forth, do you get your business, what are your a principal hauler of, and statistics of that sort.

Now, I say that the Commission's method of eliciting these things, the evidence which the Commission has consistently ruled in the past is the proper evidence, is a method entirely superior to anything that has been submitted here by the Division.

These lines are not big enough alone to go on meeting truck competition by independent truck lines, truck competition by these railroads, as they put it, dominated truck lines that they referred to, and competition direct from the railroads, themselves. We have gotten big enough and to the point where something else is necessary if the lines are to survive. We are not small enough to have the flexibility that the small lines have. We have all the burdens of sizable corporations without the advantages that any sizable corporation that you have dealt with or heard about has, and we haven't sufficient money so that we don't even know where our license plates are going to come from on the first of January. I say that because the Moran Transportation Line, doing business of over three million dollars a year, by the force and circumstances of its growth and demands of shippers placed upon them are hard put to it every year on the first of January to buy thirty dollars' worth of license plates. That is not a sound economical transportation that the country requires. And every line is in substantially that same position, with the possible exception of Arrow, who, because they were in business many years ago—

Commr. SPLAWN. What do you anticipate the net operating income would be for the first year after this company begins to operate as a consolidated company, if given that authority?

Mr. SULLIVAN. The net income or after taxes?

Commr. SPLAWN. After taxes.

Mr. SULLIVAN. Well, I have not seen the new tax law.

so—

939 Commr. SPLAWN. Well, according to the old tax law, not making any prophecy as to change in the tax law.

Mr. SULLIVAN. I checked my recollection with Mr. Reicher. He thinks somewhere around a million and a half dollars.

Act. Chmn. AITCHISON. Net?

Mr. SULLIVAN. That is net, based on the old tax law. What the new tax law will be should be an interesting question to the Commission.

Commr. SPLAWN. That million and a half net that you would realize would support what total capital structure?

Mr. SULLIVAN. Well, it depends then, I presume, on what basis you wanted to consider capitalizing it, wouldn't it? What factor you used to multiply the earnings by, or what capital structure you wanted to divide.

Commr. SPLAWN. Well, you are very practical in these matters of corporate organization. What would you suggest as being a proper capital structure?

Mr. SULLIVAN. My own thought on that—are we tying it in with transportation needs?

Act. Chrmn. AITCHISON. We are tying it in with your application. You are going to issue securities, aren't you?

Mr. SULLIVAN. That is so. I would put it this way, that I certainly think it would support a capital structure very considerably in excess of that which we have created.

Act. Chrmn. AITCHISON. You just mentioned five million  
940 dollars a moment ago. What was that?

Mr. SULLIVAN. I think that five million dollars—about four million two hundred would be the total capitalization of this company at a hundred dollars for the preferred stock and a dollar for the par.

Act. Chrmn. AITCHISON. If you got a million net after taxes, don't you think we had better begin to look into your rate structure?

Mr. SULLIVAN. That I would expect that you would do. If we produce that result, I certainly would expect that you would do it.

Commr. SPLAWN. If we tied your capital structure down, in the event we approved your application, to four or five million dollars, would that be satisfactory?

Mr. SULLIVAN. I don't know how we could change the capital structure. Certainly we expect that you will consider our capital structure to be the par of our stock plus our surplus.

Commr. SPLAWN. That dollar a share, you mean for that to be the common stock?

Mr. SULLIVAN. Certainly we do.

Commr. SPLAWN. Par value of one dollar?

Mr. SULLIVAN. That is right. We suppose that in considering the capitalization for rate-making purposes you would compute it perhaps as did the Examiner, but as it happens it comes out reasonably close to that. I assume that you would

941 consider the surplus as well as the—

Commr. SPLAWN. If I understood the Industrial Traffic, speaking through counsel, they are concerned with the fact that there may be here a twenty or twenty-five million dollar capital structure, or some capital structure very much in excess of four or five millions. Now, what is a practical way of avoiding such contingencies?

Mr. SULLIVAN. I don't know, unless he is thinking that we would be able to create that by either expansion of equipment or savings from earnings, and then change the par of our stock, as

he suggested, or change the amount without changing the par. Under his interpretation of the Delaware laws, I can't conceive how that would arise, and I can't conceive how it would affect the situation. I am quite sure—I think Section 102 of the Treasury's rules take care of our accumulations of surplus very nicely. I have no suggestion how we could protect against that, unless you were to adopt a regulation that we had to distribute surplus in the form of dividends when it got beyond a certain point, and that we might even be interested in doing without an order of the Commission.

Act. Chrmn. ARCHISON: Well, how do you make it five millions?

Mr. SULLIVAN. I was talking in round figures. We have a pro forma balance sheet which is in evidence. This is a  
942 balance sheet giving effect to the million and a half dollars which we hope to have permission to try to raise, and using that—we have preferred stock. Giving effect to that million and a half, we would have \$5,294,200 in common stock of one dollar. In the completed picture we would have \$7,104,651, or a total common and preferred of \$5,998,851, which would give us an unearned surplus of \$471,872.04.

Act. Chrmn. ARCHISON: What is going to happen to that surplus?

Mr. SULLIVAN. Well, we would consider that it stay that way.

Act. Chrmn. ARCHISON: How is it going to be used in the public service?

Mr. SULLIVAN. Presumably, since the surplus in effect is represented by a part of our physical working efforts, it remains in the public service, if that was your question.

Act. Chrmn. ARCHISON: Yes.

Really, I am more interested in knowing what kind of investment you are going to set up, rather than what your balance sheet is.

Mr. SULLIVAN. So far as the investment account is concerned, we propose, if we have a million and a half dollars, to use part of that to put ourselves in a more liquid position by retiring obligations that presently are current obligations, and as to the  
943 balance to use it to provide working funds in order that we may purchase in proper amounts, make provisions for proper deposits, and avoid certain interest charges that we are now subject to.

Act. Chrmn. ARCHISON. Well, I can see how those items might be said to be in the service of the public, but what I am trying to find out is how much have you got in that \$5,294,000 in your grandfather rights?

Mr. SULLIVAN. Oh, there is nothing. All intangibles have been removed, a hundred percent.

Act. Chrmn. AITCHISON. All right. Now, does the \$5,294,000 represent the physical property?

Mr. SULLIVAN. Absolutely.

Act. Chrmn. AITCHISON. On what basis?

Mr. SULLIVAN. I beg your pardon?

Act. Chrmn. AITCHISON. On what basis?

Mr. SULLIVAN. On the basis of uniform depreciation rates between the companies, which were calculated on the basis of the contract which we agreed upon, and which resulted in a net reduction of the book values of the equipment over that which they were personally carrying on the books. We used a harsher formula ourselves than that which the Commission expects from us.

Act. Chrmn. AITCHISON. That is what I was getting at.

Mr. SULLIVAN. I am sorry. I was not following you.

Commr. SPLAWN. In connection with your surplus account there is one contingency that I do not quite understand. You propose to give a conversion rate of preferred into common, four shares of common for one of preferred. Your common is a dollar per share par, and your preferred is a hundred. You have the difference of 24 dollars a share, which I would assume you would figure carrying into surplus.

Mr. SULLIVAN. That is right.

Commr. SPLAWN. I have some doubt whether that is sound financing, and I wondered if you had considered whether it would not be preferable to make this common no-par common with a stated value, which might be adjusted if and when there is such conversion.

Mr. SULLIVAN. It would be entirely agreeable doing that. I might say that the reason it is a dollar par is the extremely naive one of avoiding questions among ourselves when we were trying to put together a cooperative effort, which was not the easiest thing, because there was six or seven truckmen trying to interpret what it was each one was trying to do, and with different advice from his own personal counsel in each case. It simply made the picture simple to us, and we hoped it would look simpler to the National Industrial Traffic League. We feared that with no par stock the accusation might be more serious than that we met with.

Commr. SPLAWN. Now, if we should approve the application, you are agreeable to a condition that would prevent the increase of surplus as a result of conversion?

Mr. SULLIVAN. Absolutely, sir. And lest there be any doubt, there is one thing I want to say, in view of your decision in the Transport case, in which we occupied only the position of sellers—but I do want to say this about that: With this applica-

tion, the unification provision with respect to this application, we are ready, Mr. Horton is, to ask for immediate authority to merge these companies into one company and assume the obligations in liabilities, and if there is anything required there in order to do it, to come before you and get the appropriate authority for the assumption of obligations, we are willing to do that any time. We asked you for a year because of a sound reason, the reason of common sense. Maybe all of us hadn't put our minds entirely to it until we have had a chance to examine all the other properties more fully than we have had in the last few months. We ask only that that be done immediately. If we can have a year, all right. We are not seeking to have any holding company device.

Commr. PATTERSON. Do these applicants now interchange truck bodies with each other?

Mr. SULLIVAN. It has been tried by various companies. We don't among ourselves, except Moran and McCarthy have a movement that used to be larger than it is between New England and New York in which they interchanged truck bodies. There  
946 is considerable testimony in the record on that. It is a very unsatisfactory and a very unhappy arrangement.

Commr. PATTERSON. Is that because you are not able to get reimbursement for damages?

Mr. SULLIVAN. It is not only damages, but each one has a different type of equipment. Some have air brakes; some have vacuum brakes; different lights; some use a shorter trailer, and some use a longer trailer, and so on. If it is your own property, if you are running your own system, you were all in a common pot, you don't care how you do it, you run it for the good of all. But when you get to exchanging with the other fellow, it is just human nature; you can't control that situation.

Commr. PATTERSON. You will still have the same equipment when you are consolidated, won't you?

Mr. SULLIVAN. Yes; but we can move it around in different parts of the system and use certain equipment in a particular territory.

Commr. PATTERSON. You could still do all those things with a suitable interchange agreement, couldn't you? Couldn't you standardize your equipment?

Mr. SULLIVAN. Well, if all seven were to do it. You remember, some of it is nine or ten years old, and when, as, and if we can buy it—of course, I don't know how many years to come it will be before we can buy it.

947 Commr. PATTERSON. I know, but this physical equipment won't change. If you consolidate these companies, the physical equipment will be the same. Well, if you can do it by consolidation, you can do it by interchange.

Mr. SULLIVAN. You mean seven companies can get together?

Commr. PATTERSON. Yes; or twenty-seven. What about a suitable interchange agreement for the purpose, the standardization of the equipment, and suitable rules for reimbursement of damage?

Mr. SULLIVAN. First, I would suspect, if we did that, it would not be long before we would be up in the Federal Court or putting our competition out of business, unless we let every truck line join in.

Secondly, it is difficult for me to conceive how we can plan to say to Mr. Horton, "Mr. Horton, Mr. Moran has equipment suitable to your territory, so you and Barnwell can use it. Will you take all of his equipment and give us all of yours?" Well, it is more difficult to say it can be done than to explain why it can't be done.

Commr. PATTERSON. Well, isn't this equipment, the trucking equipment, particularly with respect to motors and bodies, being gradually standardized now?

Mr. SULLIVAN. Mr. Horton has probably the highest degree of standardization, because he has gotten to the point where he  
948 builds his own tractors and he builds his own trailers. Up until the last year, I think, people were trying to standardize, but it meant a four or five year program to do it. But in the last year, with supplies as scarce as they have been, I think most of the companies have had to abandon temporarily standardization.

I think I have about a half a minute.

Act. Chmn. ARCHISON. Go ahead.

Mr. SULLIVAN. Well, I think I have completed. I don't know that I have succeeded in making you really believe we are honest about this thing. We are hoping we can put it together in such a manner that the work that we have done, getting to know each other under different circumstances in the last year, that we can put that work now to the useful purpose of serving the public, because we at least have done something to the industry; we have succeeded in having seven truckmen getting together and agreeing to put their all in one boat, and taking their chances with each other, when formerly it was not even safe for two to be in the same room.

Commr. SPLAWN. This Southeastern that Mr. Woods was telling us about, just what is it adding to your activity? Does it take you to New Orleans?

Mr. SULLIVAN. No; Southeastern does not go to New Orleans, sir. Southeastern goes to Nashville and Knoxville.

Commr. SPLAWN. Who moves to New Orleans?

Mr. SULLIVAN. The Transportation, Inc.

949 One of the things that Southeastern brings to us is the youth and experience of Mr. Gilbert Brock, who took a company that was substantially broke two years ago, when he took it over, and really built a truck line out of it, which shows what can be done right under Barnwell and Horton's noses.

Commr. SPLAWN. If that company and the one into New Orleans are serving the southeast, are they also going into New England?

Mr. SULLIVAN. The situation is this—I think you are asking me: Would you run trucks all the way from New Orleans to Northern New England? Is that your question?

Commr. SPLAWN. Yes. I want to know if there is a demand so far as the shipping public is concerned for a through service from the Gulf to Canada.

Mr. SULLIVAN. We would suspect that there is not. We testified at the hearing that we have no intention, unless a public demand would develop for such service, to ever run such a service. We do not believe it is just possible at this stage of the game. Now, in the next year or two transportation may be so tied up you might have to run such a service. We can't conceive on any basis of rate at the present time how such a service would be economically possible. There are four truck lines that run from approximately Charlotte and Atlanta into New England, and they  
950 seem to be doing all right. Mr. Akers testified during the hearing that he runs the Akers Line and that he is doing all right on that long haul movement.

Commr. ALLDREDGE. Is he the one that handled that barge transportation?

Mr. SULLIVAN. Akers? I wouldn't know that, sir. He was an intervener for the purpose of trying to see what this hearing was about, I guess. He was not in opposition. He testified that he would be glad to see the merger because it would mean less solicitors calling on his customers. He also told Mr. McCarthy that he is giving up the forwarder traffic.

Commr. ALLDREDGE. When did he do it?

Mr. MCCARTHY. I talked to him some time back, three or four months ago, and I understand he gave it up.

Commr. SPLAWN. I am still interested in what Southeastern Lines are going to contribute to this consolidated operation.

Mr. SULLIVAN. Well, the Southeastern Line, Mr. Brock's company, moves off over towards Nashville and Knoxville, and covers territory towards the southwest that is not served by any of the other lines in the group. The Transportation Line moves down to New Orleans, and I guess even as far as Mobile, and serves territory not served by other lines in the group. It presently does

not make money, but we are of the opinion that with a different management it will, because it has a lawyer running it now, 951 and they always tell me, "Southeastern can't get business; they got a lawyer running it," but they hope to correct that when they get a truckman running it. It is a long, skinny operation at the end. We think it is fertile ground for experimentation, improvement of service down there, making it a real adjunct to the merger.

Commr. SPLAWN. That is along the line I was inquiring this morning. What is to prevent an ambitious management from entering upon many such experiments and reaching out into Los Angeles and San Francisco?

Mr. SULLIVAN. Well, I can think of seven reasons at the moment. We certainly would have to come to you gentlemen with an application, and you could call your shot then, or, to put it in Mr. Arnold's language, you can determine whether the deuces are wild.

Act. Chrmn. AITCHISON. Mr. Attorney General.

Mr. ARNOLD. Mr. Chairman, I understand that the two Senators are still engaged in debate on the floor of the Senate. Speaking with Senator O'Mahoney's secretary, he suggested the only thing that can be done is to allow them to file a memorandum, if that is proper under your rules.

Mr. SULLIVAN. I have no objection.

Act. Chrmn. AITCHISON. I assume there would be none. Will you get word to the Senators that if they send a memorandum we will have it incorporated?

952 Mr. ARNOLD. I will do that.

Mr. SULLIVAN. I do not think we will need to reply to the Senators, who are from Wyoming and Minnesota, and I can't speak either accent.

Act. Chrmn. AITCHISON. Well, with the understanding, then, that you will receive a copy of the statement the Senator sends down, you may have a reasonable opportunity to answer it, if you wish, and if you do not care to, you will let us know.

Mr. SULLIVAN. Yes, sir. Thank you.

Act. Chrmn. AITCHISON. These applications, then, are submitted and taken under advisement.

The Commission will adjourn.

(Thereupon, the above case was submitted, as indicated.)

953

UNITED STATES SENATE.  
 COMMITTEE ON FOREIGN RELATIONS,  
 Washington, D. C., January 27, 1942.

HONORABLE CLYDE B. AITCHISON, •

*Chairman, Interstate Commerce Commission,  
 Washington, D. C.*

MY DEAR MR. CHAIRMAN: Several days ago I requested an opportunity to appear before your Commission in the Associated Transport Merger Case which had been set down for argument yesterday, January 26. Important pending legislation, the second warpower bill, prevented my appearance. I am advised that you have extended to me the courtesy of filing with your Commission a statement of my position in this matter.

One outstanding assurance which those of us who opposed the Transport Act of 1940 received from those who sponsored that Act was that the guaranty against railroad domination and control of the motor carrier industry was retained. This assurance was given the Senate and House in the following language:

"The conferees wish to make it plain that it is not their intention by changing the language of Section 213, heretofore quoted (the railroad proviso), to change the legislative intent one iota with respect to the acquisition of a carrier by motor vehicle by a carrier by railroad, and that it is the intention of the conferees that Section 5 (2) (b), as amended by Section 7 of the conference report, shall have the same practical application and legal effect as Section 213 (a) (1) as it is now shown in Part II of the Interstate Commerce Act," 76 Cong. Rec. 17510, 15, 583. (1940).

The statute, then, is still subject to interpretation in accordance with the explanation made by Senator Wheeler when the Motor Carrier Act of 1935 was enacted, as follows:

954 "With this limitation (the railroad proviso), it will be possible for the Commission to allow acquisitions which will make for coordinated or more economical service and at the same time protect the public against the monopolization of highway carriage by rail, express or other interests." 74 Cong. Rec. 5655 (1935).

A similar statement was made to the House of Representatives by Representative Sadowski. 74 Cong. Rec. 12206 (1935).

For years I have been a member of the Interstate Commerce Committee of the Senate. By Senate Resolution 71, 74th Congress, a subcommittee, of which I am also a member, was appointed for the purpose of instituting a comprehensive investigation of the relationships between railroads and holding companies and banking houses. Numerous reports have been issued from time to time since February 1, 1939, in the form of public

documents. These reports graphically show the baneful effects of investment banker control of or association with railroads, an outstanding example of which has been the financial relationship of Kuhn, Loeb & Company to numerous railroads throughout the country. These reports are too numerous to cite here but as they are public documents I assume the Commission is advised of their contents. The purpose of these reports is to expose to public view the evils of these relationships and practices so that through legislation and administration these practices shall cease.

Therefore, I noted with satisfaction that your Commission condemned the efforts of Kuhn, Loeb & Company, the second largest railroad banking house in the country, to fasten upon the motor carrier industry the methods and practices of financial exploitation which they have, to the detriment of the public, carried on so long in the railroad field.

I understand that in the Associated Transport Case, now before the Commission, Kuhn, Loeb & Company will have a substantial minority stock interest, about ten per cent; that the contention is that this interest does not and cannot constitute in Kuhn, Loeb & Company control of Associated; and 955 that therefore none of the evils illustrated in the above reports can be expected to result. This view denies realities in such transactions, particularly where no person has actual stock control. The subcommittee reports are filled with examples of the exercise of control through minority stock interest or even by means of banker relationship without stock interest.

All such relationships are subject to the Commission's jurisdiction. If there remained any doubt, that doubt was removed in the 1940 Act. This was done by adding a provision to Section 1, paragraph 3, of the Interstate Commerce Act, a new subparagraph (b), broadening the definition of control, as follows:

"For the purposes of Sections 5 . . . of this Act, where reference is made to control (in referring to a relationship between any person or persons and another person or persons), such reference shall be construed to include actual as well as legal control, whether maintained or exercised through or by reason of the method of or circumstances surrounding organization or operation, through or by common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or through or by any other direct or indirect means; and to include the power to exercise control."

Congress had the benefit of a Supreme Court decision in adopting this definition of "control." In fact, this decision, *Rochester Telephone Co. v. United States*, 307 U. S. 125, as the conference report shows, furnished the basis for the broadening of this definition in the Transportation Act of 1940. In that case one-third common

stock interest was held to constitute control, under all the surrounding circumstances, though the other two-thirds was held in one unit under a voting trust.

In the Associated Transport Case there is involved the question of the preservation of the guaranty against railroad domination and control of motor carriers. This is so because Kuhn, Loeb & Company have been for many years and still are bankers for the Pennsylvania Railroad and Baltimore & Ohio Railroad 956 which are competing systems of transportation to the motor carriers in the Associated Transport Case. This method of indirect control was sought to be reached by Congress for Commission scrutiny and action. We had understood that ample provision was made therefor. It is just such interrelationships that lead to the circumvention of the provisions guaranteeing against unrestricted entry by railroads into the motor carrier field and no narrow interpretation of law urged by railroad-bankers interests should be permitted to defeat the Congressional purpose. Otherwise, the assurances which I have mentioned become meaningless.

I thank you for the opportunity of expressing these views. As requested, I am sending a copy of this letter to the members of the Commission and to the parties in the Associated Transport Case.

Very truly yours.

HENRIK SHIPSTEAD.  
Henrik Shipstead.

Copies to—

Commissioner Claude R. Porter, Interstate Commerce Commission, Washington, D. C.

Commissioner William E. Lee, Interstate Commerce Commission, Washington, D. C.

Commissioner Charles D. Mahaffie, Interstate Commerce Commission, Washington, D. C.

Commissioner Carroll Miller, Interstate Commerce Commission, Washington, D. C.

Commissioner Walter M. W. Splawn, Interstate Commerce Commission, Washington, D. C.

Commissioner John L. Rogers, Interstate Commerce Commission, Washington, D. C.

Commissioner J. Haden Alldredge, Interstate Commerce Commission, Washington, D. C.

Commissioner William J. Patterson, Interstate Commerce Commission, Washington, D. C.

Commissioner J. Monroe Johnson, Interstate Commerce Commission, Washington, D. C.

Hon. Thurman Arnold, Assistant Attorney General, Anti-trust Division, Department of Justice, Washington, D. C.

Mr. Mastin G. White, Solicitor, U. S. Department of Agriculture, Washington, D. C.

957 C. A. Cochran, Law Building, Charlotte, North Carolina; Hugh M. Joseloff, 410 Asylum Street, Hartford, Connecticut; Mortimer Allen Sullivan, Prudential Building, Buffalo, New York; J. D. Lawson, P. O. Drawer 540, Charlotte, North Carolina; Fred A. Tobin, 932 Bowen Building, 815 Fifteenth Street, NW., Washington, D. C.; Warren Woods, Roberts & McInnis, 735 Transportation Building, Washington, D. C.; John M. Miller, First National Bank Building, Kingsport, Tennessee; Charles J. Fagg, 24 Branford Place, Newark, New Jersey; W. G. Burnette, 209 Lynch Building, Lynchburg, Virginia; Floyd F. Shields, 221 West Roosevelt Road, Chicago, Illinois; Joseph W. Connelly, No. 1 Franklin Street, Alexandria, Virginia; James D. Mann, 450 Munsey Building, Washington, D. C.; James A. Glenn, 735 Bowen Building, Washington, D. C.; Edward F. Lacey, Executive Secretary, National Industrial Traffic League, 450 Munsey Building, Washington, D. C.; W. H. Ott, Jr., 500 Peshtigo Court, Chicago, Illinois; Thomas P. O'Brien, 815 Fifteenth Street, NW., Washington, D. C.; J. B. Dempsey, First National Bank Building, Kingsport, Tennessee; L. F. Orr, Arcade Building, St. Louis, Missouri; W. S. Campfield, Secretary, Virginia State Horticultural Society, Staunton, Virginia; Carroll R. Miller, Secretary, West Virginia Horticultural Society, Martinsburg, West Virginia; L. E. Newcomer, Manager, Berks-Lehigh Mountain Fruit Growers, Inc., Boyertown, Pennsylvania; Fred Breckman, Washington Representative, National Grange, 1343 H Street, NW., Washington, D. C.; Edward A. O'Neil, President, American Farm Bureau Federation, Munsey Building, Washington, D. C.

958

[Copy]

JANUARY 28, 1942

HONORABLE HENRIK SHIPSTEAD,

*United States Senate, Washington, D. C.*

MY DEAR SENATOR SHIPSTEAD: The written statement which you have submitted in the Associated Transport Control Cases, Docket Nos MC-F-1612 and 1618, has been received. We would have been glad to have had your statement made orally, but as that was impossible, it was agreed by all concerned that your statement, when received, would be made a part of the record upon the argument, and it will be so considered. I notice that you have furnished my colleagues each with a copy, and that a copy has been sent to counsel for each of the parties appearing in the cases.

Mr. Sullivan may desire to reply. It was understood that if he did, he would file his reply promptly and would, of course, see

that copies were sent to you and others who have appeared in the proceedings.

Very truly yours,

(s) CLYDE B. AITCHISON,  
*Acting Chairman.*

959

UNITED STATES SENATE  
COMMITTEE ON APPROPRIATIONS,  
*February 16, 1942.*

HONORABLE CLYDE B. AITCHISON, *Chairman,*  
*Interstate Commerce Commission, Washington, D. C.*

MY DEAR MR. CHAIRMAN: It was a matter of great regret to me that, having been designated by the Chairman of the Judiciary Committee of the Senate to take charge of the Second War Powers bill which was before the Senate on January 26, I was unable to appear before the Interstate Commerce Commission on that day to participate in the argument of the Associated Transport, Inc. case and I desire to express appreciation of the courtesy of the Commission in permitting me to file a statement of my views. I shall make it brief.

When the application for authority to make the proposed merger came to my attention I took the liberty of suggesting to Assistant Attorney General Thurman Arnold, who had been the representative of the Department of Justice on the Temporary National Economic Committee, of which I was chairman, that the Anti-Trust Division intervene in this case to oppose the merger. This I did because of my conviction, as a result of the studies of the TNEC, that the maintenance of the policy of the Sherman Anti-Trust Act is more important now than ever before and that the creation at this time of the largest motor vehicle common carrier in the United States (Proposed report, sheet 37) by the merger of eight large carriers, among whom "substantial competition exists" (Proposed report, sheet 24) would not be "consistent with the public interest."

It seemed to me when first I heard of the application that a huge new merger bringing under single control more than 24,000 miles of route operation from the Canadian Border to New Orleans could not fail to be out of harmony with the competitive ideal. After I had the opportunity of reading the proposed report, no doubt was left in my mind that I should seek an opportunity to express to the Commission my belief that the proposed merger should not be approved.

The argument may be summarized as follows:

960 1. The national policy in opposition to combinations and mergers in restraint of trade has not been abandoned by Congress.

2. The history of our times has demonstrated beyond cavil that the steady concentration of economic power in fewer and fewer large units has been accompanied by increasing economic instability, unemployment of both men and money, the progressive deterioration of little business, the undermining of local economic independence and the constantly growing demand upon the government to support the people who, because of this very concentration, are losing the power to support themselves.

3. There is nothing in the Motor Carrier Act to indicate a Congressional intent to *promote* motor carrier mergers, but, on the contrary, the Act itself by requiring the submission of merger applications to the Commission, is proof of an intent on the part of Congress to bring mergers under public supervision.

4. The whole philosophy of the Interstate Commerce Commission Act and related statutes is that the activities of carriers and interstate commerce should be supervised in the public interest. It follows, therefore, that the first consideration of the Commission in all such cases as the present one must be the public interest and not the convenience or profit of the applicants. The record here fails to disclose any public demand for the proposed merger, but, on the contrary, the proposed report clearly shows that the application rests only upon an insubstantial basis of prophecy that the merger would tend to "greater economy and efficiency of operation" (Proposed report, sheet 11) and "would result in simplifying relationships with shippers and public regulatory bodies." (Proposed report, sheet 13).

5. The proposed report is full of findings, admissions and conclusions which demonstrate that no sufficient basis of fact has been presented to justify the conclusion that a reversal of the fundamental national policy against combinations would, in this case, be consistent with the public interest.

1 and 2. Volumes could be written to support propositions 1 and 2 above. Suffice it to say that although Congress has upon occasion granted exemptions from the antitrust laws it has usually, as in the case of the NRA, repented its lapse from sound principle. A proposal to repeal the antitrust laws would not have the support of any political leader or any political party because it is altogether too clear to the people that combinations and mergers have been among the most efficient causes of economic distress.

Whenever it is argued, therefore, that Congress, in any particular statute, intended to foster combinations and mergers, something much stronger than an inference must be presented. There should be a positive showing that the proposed merger is definitely in the public interest.

961 3 and 4. The argument of the Examiner in the present case is based wholly upon inference. He contends (Pro-

posed report, sheet 39) that Congress by "recent legislation" showed an "intent to encourage railroad unifications" and draws from this the conclusion that it must therefore be assumed that Congress also intended to encourage motor carrier unifications.

Let me quote from the proposed report:

"Recent legislation shows a Congressional intent to encourage railroad unifications. In view of the national transportation policy, as declared in the act, it cannot be supposed that Congress intended that the motor-carrier industry, a coordinate and competing form of transportation, should be discriminated against in such respect. On the contrary, considering the much greater number of motor carriers of property and their relative size as compared with railroads generally, the need of unifications in the trucking field is more apparent than in the case of railroads, which have already had many years of development."

It seems to me to be clear that "it cannot be supposed" that Congress intended to promote combinations and mergers in the motor trucking field without a specific declaration of such intent by Congress. "The need of unifications in the trucking field" may be "more apparent" to the Examiner "than in the case of railroads" but until Congress has indicated a clear intention to promote such unifications, surely it cannot be argued that the alleged need is at all apparent to Congress.

It is not necessary, I am sure, to point out to the Commission that conditions in the railroad and motor transportation fields are utterly different and that a Congressional policy, which may have been adopted in respect to the former, is not at all to be assumed to be the policy in respect of the latter. If Congress has intended to promote motor truck mergers, it would have said so.

As a matter of fact, the passage of the acts giving the Interstate Commerce Commission jurisdiction over carriers by motor vehicle demonstrates the contrary intent. The natural growth of motor transportation without federal supervision had been such that Congress came to the conclusion that public supervision should be provided. *Before the passage of the Act*, this merger could have been perfected without submission to the Interstate Commerce Commission. The fact that the application must be considered by the Commission is proof, it seems to me, that the intention of Congress was to make certain that mergers and combinations in the future should be primarily in the public interest.

5. Can the Commission, on the present record, make a positive finding that the public interest would be served by the proposed merger? The proposed report makes no such finding. Indeed, it undertakes, in a wholly negative manner, to argue that the public interest would be served, as may be clearly shown by a few quotations:

962 On sheet 2 we find this sentence:

"A number of other motor carriers, shippers, shipper organizations and the Lynchburg, Va., Chamber of Commerce also intervened but did not oppose the application."

Is the failure of certain interveners to oppose the application to be construed as evidence of public demand?

On sheet 11 we find the following sentence:

"The evidence is convincing that unification of these carriers under common control, and consolidation of their operations into one unit, would present many opportunities for greater economy and efficiency of operation."

Is the presentation of an opportunity any indication that advantage will be taken of it? Are economy and efficiency of operation by a large economic organization necessarily in the public interest? Economy and efficiency of operation are primarily in the interest of the owners of an enterprise. Economy and efficiency such as would appeal to an efficiency engineer might very easily cut down public service and reduce opportunities for employment.

Indeed, that would be the case in this instance as the report shows in the last paragraph on page 11 wherein it is pointed out that terminals would be consolidated and rearranged in 129 cities and towns. If the 179 separate terminals in these 129 cities and towns were to be reduced, there would be an obvious "opportunity for greater economy and efficiency of operation" in the number of persons employed, as was clearly apparent to the Examiner who, on sheet 13, says:

"A reduction in the number of solicitors calling on shippers would result."

On sheet 16 the proposed report recognizes the possibility of labor displacement, but brushes this consideration off by referring to it casually as a "minor detriment to employees." If the Examiner had sat, as I have sat, on a Congressional appropriation committee confronted with the necessity of providing appropriations out of an ever-deepening national deficit to take care of unemployment, he might not have regarded a manifestation of unemployment as a "minor detriment."

On sheet 23 the Examiner proposes that the Commission should find:

"That there are substantial duplications in the operations of the carriers involved and, under such circumstances, continuance of separate operations by them under common control would be uneconomical and inconsistent with the public interest."

963 The characteristic of competition is duplication of service. The elimination of duplication of service reduces employment and deprives the public of the advantages of competition. This argument of the desirability of removing duplication

has been the favorite argument of the promoter in support of every merger and combination for which stocks and bonds have been sold to a gullible public.

On sheet 24 the Examiner acknowledges that competition would be eliminated by the merger in the following sentence:

"Undoubtedly, substantial competition exists between certain of the carriers involved, and consummation of the instant transactions would eliminate such competition."

My point is that this substantial competition should be maintained that the Commission should do nothing to eliminate it unless it should be demonstrated clearly to be in the public interest. No such demonstration has been made in the proposed report.

I shall not undertake further analysis of the report, nor shall I prolong the argument. Suffice it to conclude by expressing the hope that the application will not be approved.

As requested, I am enclosing copies of this letter for the members of the Commission and am sending a copy to the parties in the Associated Transport Case.

Sincerely yours,

JOSEPH C. O'MAHONEY.  
Joseph C. O'Mahoney.

JCOM: M

964

FEBRUARY 7, 1942.

[Copy]

Honorable JOSEPH C. O'MAHONEY,

United States Senate, Washington, D. C.

MY DEAR SENATOR O'MAHONEY: I am in receipt of your letter of February 16, 1942, containing your written argument in Docket No. MC-F-1612 and 1613, Associated Transport Control Cases, together with copies for my colleagues which I will have transmitted to them promptly. A copy will be filed in the docket and will be considered a part of the record upon the argument.

On behalf of the Commission I wish to thank you for your interest in this proceeding.

Very truly yours,

(s) CLYDE B. AITCHISON,  
Acting Chairman.

965

FEBRUARY 21, 1942.

HON. CLYDE B. AITCHISON, *Chairman**Interstate Commerce Commission, Washington, D. C.*

RE: ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—

ARROW CARRIER CORPORATION, ET AL.—Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES—

Docket No. MC-F-1613

DEAR MR. CHAIRMAN: Upon returning to the office today after a short business trip, it was found that on February 19th we were in receipt of a copy of a communication dated February 16th addressed to yourself from the Honorable Joseph C. O'Mahoney in the matter of the Associated Transport, Inc. presently pending before the Interstate Commerce Commission. We had presumed that the Commission's courtesy in permitting the filing of a statement on the Senator's views and our acquiescence in such a procedure carried the implication that such a statement would be seasonably filed.

At the time of oral argument we implied a doubt of our ability to understand the accent of persons whose residence and primary interests are removed by fifteen hundred or more miles from the needs and problems of the parts of the country under discussion. During the past few months by virtue of necessity we have acquired considerable familiarity with the accent of the Anti-Trust Division and accordingly although the hand may be the hand of Esau we feel constrained to reply to the voice of Jacob. It is hard to comprehend how Senator O'Mahoney's suggestion that his former lawyer, Mr. Thurman Arnold, intervene in the Associated Transport case could have been the result, as the letter avows, of his reaction when he "heard of the application that a huge new merger bringing under a single control more than 24,000 miles of route operation." The facts are and the record will disclose that the information that the combined companies would have "24,000 miles

of route operation" was only developed by complicated studies and calculations made after the close of the hearing and as a result of the Examiner's request for such data, and this was many weeks after the Senator had allegedly been disturbed into action. Confronted with such a situation, it would be understandable if one were impelled to speculate on the possibility of other reasons for this sort of lend-lease aid of a senatorial toga and whether the intervention of the Division in the many other motor carrier matters during the past few months may be said to flow from this specific suggestion or, if not, what was the nature of the evidence examined by the Senator to prompt suggestions in those cases.

May we remind the Commission that in spite of the stream of abuse heaped upon the Examiner and his report, no one has nor

could have refuted any of the facts that the Examiner found. Apparently the attacks were and still continue to be, to draw a parallel, for which precedent has been established, based on the German propaganda principle, that any statement repeated often enough is accepted as the truth. May we invite the Commission's attention to the extraordinary number of appearances filed in this case after the conclusion of the testimony, and the significant nature and potential connections and possible mutual political or friendly interests of the opposition. Even the lone alleged "independent" witness produced by the Division, Theodore Brent, aside from his "property interest" as a competitor of the applicants, admitted under cross-examination that his advent into the case came about when he was visiting Washington in search of Government war contracts.

We feel it would be almost presumptuous on our part to indicate to the Commission the elementary differences between the language of the Motor Carrier Act and the Commission's interpretation of the Act as set forth in their decisions on the one hand and the interpretations of this Law or Congressional intent claimed by or for the Senator on the other hand. As did Assistant Attorney General Thurman Arnold, the Senator appears to be arguing that it was the intent of Congress that, to gain approval of a merger, motor carriers must affirmatively show that an application will "promote" rather than "be consistent with" the public interests and that "promote" means that no merger application can be granted unless without it there can be no "adequate" transportation in the territory (practically this would be to apply a test of "convenience and necessity") and that if there is no adequate transportation in the territory except through that which would be brought about through a merger, then a merger still cannot be approved because, being the only adequate transportation system, it would have a monopoly.

Repeated again in the Senator's letter is the characteristic philosophy of the Anti-Trust Division, "economy and efficiency of operation are primarily in the interests of the owners of the enterprise".

Did Congress not think it necessary and in the public interest when a few days ago it gave to the Commission authority to order joint use of terminals, garages, and other physical equipment? Certainly the applicant company could quickly and efficiently achieve the result now considered by Congress so necessary. Aside from the war emergency and the shortage of trucks, gasoline, tires, parts, and labor, it is not, to use the Division's words, "crystal clear" that the public interest requires the expedition of movements of freight, the reduction of operating costs, the prolongation of the life of equipment by scientific maintenance, the progressive de-

velopment of more suitable terminal facilities, the simplification of shipper relationships and billing and accounting procedure, the reduction of loss and damage to freight in transit, and the many other benefits and economies testified to by members of the shipping public during the progress of these proceedings?

Presumably one of the primary purposes for the establishment of the Interstate Commerce Commission in its present form was the promotion of a sound economical transportation system by motor trucks as well as by other forms of carriage, and the shipping and general public who pay the bills would be reluctant, we would expect, to learn that it was the intent of Congress to ban "economy and efficiency of operation" because the benefit of owning an economically and efficiently managed company must flow in some part to the owners of the business at the same time that it flows to the public in the form of stabilized or lowered rates and to prevent the achievement of those things which are necessary to guarantee perpetuation of continued service to the public in a hazardous economic future.

968 This approximates the consistency of the contention we so lately heard that the applicant companies are an "Interessengemeinschaft", amounting to a "Konzern", whose association, to carry out Mr. Arnold's "breach of promise" simile, should be deprived of the blessing of a marriage ceremony under the law and by the Commission but should rather be required "by agreement" to live together in sin so they may be prosecuted by the righteous crusaders of the Division (as for example, Consolidated Freightways), unless of course they will submit the regulation of their economic affairs to the consent decree processes of the Division instead of the Interstate Commerce Commission.

This application is before the Commission in great part because the operators involved know that truck lines, unlike the Government, cannot operate continually at a deficit and have been confronted many times in the past with the necessity of providing appropriations out of ever-deepening deficits and can appreciate the Senator's distress at such a necessity even more feelingly since the deficits with which they dealt were their personal ones and not those of the taxpayers. The ability of labor, through its organizations and particularly the International Teamsters' Union, to protect its members from even "minor detriment to employees" has been amply demonstrated. We are not optimistic that their efforts in that direction will be appreciably relaxed in the future. Should the alleged opinion of the Senator prevail over the Stated opinion of such a competent labor organization as the International Brotherhood of Teamsters, Chauffeurs and Helpers?

It is neither our desire nor purpose to enter into political controversy. For fifty-four years the Interstate Commerce Commis-

sion has had an outstanding record of according every issue in litigation consideration solely on its merits. Every right-thinking citizen must deplore, especially in these times, a philosophy of Government which would require expediency to dictate a necessity that meritorious applications be determined by a show of Legislators' hands in lieu of the unbiased judgment on the facts by constitutionally independent tribunals.

We thus finally submit our case with the respectful prayer  
969 that these truck companies, who have their entire economic futures at stake and whose public and private interests far transcend an intangible theoretical approach to an economic Utopia and whose genuine effort at most considerable expenditure of time and assets to translate into fact the expressed views of the Interstate Commerce Commission as they have read and understood them, shall not have pleaded their worthy cause in vain.

Respectfully yours,

ASSOCIATED TRANSPORT, INC.,  
By CLAUDE A. COCHRAN,  
HUGH M. JOSELOFF,  
MORTIMER A. SULLIVAN,

*Attorneys for Applicants.*  
1775 Broadway, New York City.

MAS: EG

We are enclosing copies of this letter for the members of the Commission and are sending a copy to the parties in the Associated Transport case and to:

Hon. Joseph C. O'Mahoney, United States Senate, Washington, D. C.; Hon. Henrik Shipstead, United States Senate, Washington, D. C.

[Copy].

FEBRUARY 26, 1942.

970 Mr. MORTIMER ALLEN SULLIVAN,

*Prudential Building, Buffalo, N. Y.*

DEAR MR. SULLIVAN: Receipt is acknowledged of twenty-five copies (mimeographed) of your letter of February 21, 1942, addressed to me, relative to Associated Transport, Inc.—Control and Consolidation—Arrow Carrier Corporation, et al—Docket No. MC-F-1612, and Associated Transport, Inc.—Issuance of Securities—Docket No. MC-F-1613.

I am today sending a copy of your letter to the members of this Commission.

Very truly yours,

(s) CLYDE B. AITCHISON,  
*Acting Chairman.*

971 [Report and order of I. C. C. Omitted. Printed side page. 10 ante.]

1021 Before the Interstate Commerce Commission

Docket MC-F-1612

ASSOCIATED TRANSPORT INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION ET AL

Docket MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Petition of the Secretary of Agriculture, Intervener, for Rehear-  
ing, Reargument, and Reconsideration*

Filed April 10, 1942

Comes now your petitioner, the Secretary of Agriculture, inter-  
vener in the original proceedings, and respectfully requests re-  
hearing, reargument, and reconsideration in the cases captioned  
above, and for grounds of such request says:

1. The statement in the report of the Commission in its deci-  
sion of March 16, 1942, in the cases captioned above that "Prot-  
estant's application does not specify the particular railroad or  
railroads with which it is believed applicant would be affiliated  
as the result of the participation of Kuhn, Loeb and Company"  
indicates that, in the opinion of the Commission, the record is  
incomplete with respect to the relationship which will exist be-  
tween Kuhn, Loeb and Company and applicants.

1022 2. An examination has been made of the new evidence  
offered by the Anti-Trust Division of the Department of  
Justice in its petition of this date in the cases captioned above.

3. It is believed that the incorporation into the record of the  
new evidence, referred to above, will be persuasive of a decision  
contrary to that reached by the Commission in its order of March  
16, supra.

Wherefore, petitioner prays that the cases captioned above be  
reopened for the taking of evidence, and that the Commission  
reconsider them and grant reargument thereon.

Respectfully submitted,

By direction of the Secretary.

(signed) ROBERT H. SHIELDS,

*Solicitor, United States Department of Agriculture,**Washington, D. C.*

HASKELL DONOHO,

*Of Counsel,*

CHAS. B. BOWLING,

*In Charge, Transportation Section,**Transportation and Warehousing Branch,**Agricultural Marketing Administration.*

Dated at Washington, D. C. April 10, 1942.

1023

## CERTIFICATE OF SERVICE

I hereby certify that I, this day, served the foregoing document upon all parties of record in this proceeding by-mailing a copy thereof, properly addressed, to each such party.

Dated at Washington, D. C., this 10th day of April 1942.

(signed) HASKELL DONOHO,

Senior Attorney, United States Department of Agriculture,  
Washington, D. C.

1024

Before the Interstate Commerce Commission

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATED—ARROW CARRIER CORPORATION ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Petition of the Antitrust Division, United States Department of Justice, for (1) Reopening and Rehearing; (2) Reargument and Reconsideration*

Filed April 10, 1942

Comes now the Antitrust Division, United States Department of Justice, party of record in these proceedings, and respectfully petitions the Commission (1) to reopen said proceedings for further hearing and (2) for reargument and reconsideration, and in support of said petition respectfully shows:

## I

That issues of general transportation importance are involved in said proceedings which necessitate the granting of this petition.

## II

1. The Commission in its report at pages 35 to 37 inclusive, under the subtitle "Railroad Relationship" states:

"Protestant's allegation does not specify the particular railroad or railroads with which it is believed applicant would be affiliated as a result of the participation of Kuhn, Loeb & Company."

As no pleadings were filed by interveners or protestants in these proceedings, other than motions to compel motor carriers, parties

to the merger, and others, to produce additional evidence in their possession, it is assumed that this reference is to statements made in argument on brief and orally before the Commission. If so, it seems clear that the only railroads with which applicant could be "affiliated" within the meaning of the statute as a result of the participation of Kuhn, Loeb & Company are The Pennsylvania Railroad Company and The Baltimore and Ohio Railroad Company. And, despite the above statement of the Commission, this seems to be its view, for after finding the merger would result in Kuhn, Loeb & Company obtaining a substantial interest in applicant, the Commission adds:

"Kuhn, Loeb & Company is represented on the Board of Directors of several railroads operating outside of the territory here involved, and for many years it has been banker for The Baltimore and Ohio Railroad Company and The Pennsylvania Railroad Company, each of which operates in this territory." [Italics supplied.]

2. The only inference that could be drawn from the Commission's statement first above quoted is that it is not sufficiently informed on this record of the relationships between Kuhn, Loeb & Company and The Pennsylvania Railroad Company and The Baltimore and Ohio Railroad Company to enable it (1) to determine the effect in these proceedings upon the public interest of such relationships or (2) to determine whether it is reasonable to believe that the affairs of applicant will, because of such relationships, be managed in the interest of either or both of these railroads and, if so, subject this transaction to the proviso of Section 5 (2) (b).

3. Petitioner undertook to prepare and present to the Commission facts material to a determination of the issue of restraint and monopoly in these proceedings from the public viewpoint. The time allotted for preparation, however, was too short and the several requests of petitioner for additional time was denied 1025 by the Examiner who presided at the hearing. (Tr. 13, 851, 858, 935, 940). While your petitioner believes that the Commission on this record is in a position to consider and determine the effect in these proceedings upon the public interest of the relationships of Kuhn, Loeb & Company above set forth, and whether this transaction because of such relationships falls within the proviso of Section 5 (2) (b), it is equally clear that had sufficient time been granted as requested by petitioner, additional facts could have been developed for this record which would have removed any uncertainty or doubt which the Commission may entertain in regard thereto.

4. At the rehearing prayed for herein petitioner will show and offer to prove by documentary evidence and by a series of concrete cases drawn from the files of The Pennsylvania Railroad Company, The Baltimore and Ohio Railroad Company, the records of the Interstate Commerce Committee and the Banking and Currency Committee of the United States Senate, the records of the Interstate Commerce Commission, and from other similar sources, the following facts:

(a) That Kuhn, Loeb & Company have been the principal bankers for the Pennsylvania Railroad System for over a half century and still act in that capacity.

(b) That the major financial transactions between Kuhn, Loeb & Company and the Pennsylvania Railroad System total in excess of \$1,300,000,000.

(c) That Kuhn, Loeb & Company participated in conferences and planning out of which was organized the Penroad Corporation designed to avoid the jurisdiction of the Interstate Commerce Commission and the provisions of the Clayton Antitrust Act; that the entire voting power of the stockholders of that corporation was vested in an officer and two directors of the Pennsylvania Railroad Company; and that the stated purpose of that corporation was "to invest its funds in securities of any corporation or other agency, including those engaged in transportation of any description on land or water or by air, but without power to operate railroads."

(d) That Kuhn, Loeb & Company participated in and negotiated purchases of stock in carriers for the Pennsylvania Railroad System.

(e) That the Pennsylvania Railroad Company through its wholly-owned subsidiary, American Contract and Trust Company, owns and operates common carriers of property by motor vehicle and today is the largest railroad owner and operator of such motor truck lines in the Nation.

(f) That the common carrier motor truck operations of the Pennsylvania Railroad Company through the American Contract and Trust Company parallel in part those of motor carriers, parties to the proposed merger in these proceedings.

(g) That Kuhn, Loeb & Company have been the principal bankers for The Baltimore and Ohio Railroad Company for over a half century.

(h) That Kuhn, Loeb & Company, with Speyer & Co., reorganized The Baltimore & Ohio Railroad Company and acted as reorganization managers.

(i) That Kuhn, Loeb & Company has underwritten and sold to the public large amounts of securities for The Baltimore and Ohio

Railroad Company and has participated in and negotiated the purchase of stock in carriers for that railroad.

(j) That The Baltimore and Ohio Railroad Company owns a substantial stock interest in a large common carrier of property by motor vehicle which is competitive in part with the motor carriers, parties to the merger.

(k) That even though Kuhn, Loeb & Company did not have as much as one (1%) percent stock interest in The Pennsylvania Railroad Company and The Baltimore and Ohio Railroad Company they exercised powerful influence which was often a determining factor in the affairs of those railroads.

5. The taking of evidence as set forth in paragraph 4 will conclusively establish that the substantial financial interest which Kuhn, Loeb & Company would obtain in Associated Transport, Inc., would be contrary to the public interest. The reasons therefor can not be more clearly or concisely stated than in the dissenting opinion of Commissioner Patterson on the present record, as follows:

"The main purpose of Arrow inclusion appears to be the opportunity afforded a great banking institution to enter the vast motor carrier business which serves the nation. I cannot approve indirect participation by Kuhn, Loeb & Company as part owner of Associated Transport. The influence of such a financial power over the affairs of corporations, of which they own a part, is far beyond the proportion of stock held. Evils which have attended such participation in railroad transportation are well known. Section 5 of the Act was designed largely to avoid recurrence of such evils. The National Transportation Policy makes it a Commission responsibility to avoid dangers that may injure the transportation system which serves national commerce and defense. I regard part ownership of Associated Transport by Kuhn Loeb & Company as inimical to public interest and national welfare."

And, further, such evidence will conclusively establish that the instant transaction falls within the spirit and letter of the proviso of Section 5 (2), (b) in that the circumstances here present are such as to make it reasonable to believe that the affairs of Associated Transport, Inc., could and would be managed in the interest of The Pennsylvania Railroad Company and The Baltimore and Ohio Railroad Company.

### III

1. Since the hearings in these proceedings new evidence has been discovered which has a material bearing on the issues here involved and its inclusion in the record and consideration by the

Commission is essential to a proper disposition thereof. This evidence will show that the purpose and inevitable result of the proposed merger will be to restrict and restrain, through various means and devices, the ability of independent motor lines to function competitively to the merged lines, thereby assuring to Associated Transport, Inc., monopolistic control of the carriage of freight by motor vehicle along the Atlantic seaboard. This new evidence which petitioner will offer at the hearing prayed for herein will establish:

(a) That as a result of negotiations between representatives of Associated Transport, Inc., applicant herein, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, culminating in an agreement to unionize the operations of Associated Transport, Inc., independent small motor carriers also engaged in negotiations with that Union have been refused as favorable terms in their labor contracts.

The evidence will show that no Carolina Motor carrier had a union contract covering over-the-road operations prior to September 19, 1939. Shortly thereafter unionization of motor carriers in this territory was begun with the result that six small motor carriers are presently fully unionized. Contracts between these motor carriers and the Union expired in November 1941 and negotiations for renewal of the labor contracts of these carriers were begun concurrently. Following negotiations and mediation extending over a period of several months, an oral agreement was reached on or about January 17, 1942, between representatives of the Union and these motor carriers as to the terms of the new contracts. Prior to the presentation of the written contract for signature, however, the Union succeeded in reaching an agreement with representatives of Associated Transport, Inc., to unionize the operations of that company. As a consequence the Union's national and local representatives refused to enter into the contract agreed to on or about January 17, 1942, with the six independent

1027 small motor carriers and demanded that those carriers sign contracts providing for higher payments and containing much more onerous terms than those previously agreed to.

The reasons advanced by the national representative of the Union was that "I have been talking to the 'big fish' in the merger. You won't get as good a contract as the merger."

The evidence will further show that the ability of the merged lines to thus compel a labor agreement more favorable to them than to small independent motor carriers will, because of the added burdens thereby imposed upon such carriers, so restrict and restrain them in their ability to function as carriers for hire that,

if they can continue to operate at all, all semblance of effective competition to the merged lines will be removed.

(b) That motor carrier lines, parties to the merger, have through concerted action carried on a systematic plan of opposition to applications before the Commission concerning operating authorities of small independent motor carriers, thereby unnecessarily prolonging such proceedings and imposing a heavy financial burden on such independent carriers in establishing their legal rights, which the merger, because of its greater financial strength and control of traffic, will intensify.

The evidence will show that since the inception of the plan and merger in the original Transport case, and continuing to the present time, Horton Motor Lines, Incorporated, Barnwell Brothers, Incorporated, and other carriers, parties to the merger, have systematically and concertedly opposed applications by small independent carriers for operating rights without regard to the competitive character of the operations sought to be certificated or the legal rights involved. In some cases, counsel for one carrier has represented other carriers, parties to the merger. In other cases, motor carriers, parties to the merger, have prevailed upon local interchange carriers dependent upon the carriers, parties to the merger, for interchange traffic to also appear and protest such applications, and for this purpose the facilities, records and employees of the motor carriers, parties to the merger, have been made available to the other protesting carriers. Procedural and other devices have been employed to delay and frustrate efforts by independent motor carriers to secure legal recognition of their operating rights or the extension thereof in the public interest. The resources of the small independent carriers have been so limited that in some instances the expense involved has been prohibitive. Concentration of financial power and control of traffic in Associated Transport, Inc., will increasingly intensify the burden of small independent motor carriers in their efforts through protracted proceedings to establish and maintain their legal rights.

(c) That Associated Transport, Inc., will, if allowed to consummate the proposed merger, be thereby enabled to control rates and private rate making machinery, to take arbitrary action in respect thereto, and thereby destroy independent action by independent motor carriers in the making of rates and charges to the public.

The evidence will show that Associated Transport, Inc., will, if the merger is consummated, control a large portion of a higher-rated freight moving out of the southern Atlantic seaboard area into the industrial north; that by reducing its rates on the low-rated freight it can force independent carriers to lower their rates cor-

respondingly and thus deprive them of revenues without material impairment of its own revenues; that certain members of the proposed merger through their control of key positions in motor carrier rate conferences have effective control over the making of rates and practices relating thereto; and that the merged lines will be in a position to exercise this combined control in such manner as to dictate rates and rate practices for the entire motor carrier industry in the affected area. The evidence will show that this situation can be developed in such manner as to avoid the jurisdiction of regulatory bodies since it will be the result of the present control of premium freight by carriers, parties to the merger; and since the adherence and support of local interchange carriers is now and will be secured in favor of the merged lines by reason of their control of interchange tonnage.

2. Petitioner submits that this new evidence is material to a determination of the vital issues in these proceedings for it will establish in this record the methods and means by which the consummation of the proposed giant merger will, contrary to the public interest, place in Associated Transport, Inc., monopolistic control over the entire motor carrier industry along the Atlantic seaboard.

#### IV

1. The far reaching effect upon the public interest of the Commission's decision in these proceedings impels petitioner to also respectfully seek reargument and reconsideration of the Commission's decision therein on the following grounds:

(a) The Commission has misinterpreted its powers under Section 5 of the Interstate Commerce Act and has failed to apply the proper criterion in reaching its conclusion.

(b) The Commission's findings as hereinafter set forth are not supported by law and the evidence in the case.

2. The interpretation of Section 5 of the Interstate Commerce Act as set forth at pages 17 and 18 of the Commission's decision is in effect a declaration that the letter and spirit of the antitrust laws have been repealed insofar as the Commission is concerned. This is so, the Commission holds, because transactions given its approval are under paragraph 11 of Section 5 relieved from the provisions of such laws. Hence, the Commission asserts, "Section 5 authorizes us to permit unifications which would except for such approval result in restraining competition contrary to the antitrust laws, where the disadvantages of such restraint are overcome by other advantages in the public interest, such as direct betterment in the public service of the carriers or indirect betterment through stabilization of the industry." This view, petitioner respectfully con-

tends, can only lead to regulated monopoly in the motor carrier field contrary to the express policy of Congress.

3. Petitioner submits that the spirit and letter of the antitrust laws have been written into the Interstate Commerce Act as indeed it has been written into many regulatory acts passed by Congress. It is only when the Commission has strictly observed and correctly followed the criteria laid down by Congress that paragraph 11 of Section 5 comes into play and then only "insofar as it may be necessary to enable them (parties to merger) to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission." Congress here assures such parties that such transactions could not then be attacked in any other forum.

The Commission also asserts:

"Determination of the larger question as to whether the proposed unification would be consistent with the public interest involves consideration not only of the competition that would be eliminated, but also of the competition that would remain and advantages that would result from the unification." (p. 18).

Here is seemingly an admission that the criterion laid down by Congress in the phrase "consistent with the public interest" requires a consideration of the degree of restraint which may result from the consummation of a given transaction for which Commission approval is sought. As a guide to the determination of whether such transaction would be "consistent with the public interest" Congress has specifically provided that the Commission should give consideration "to the effect of the proposed transaction upon adequate transportation service to the public." Considerations of economy or efficiency in operation referred to by the Commission under the heading "Competition" are guides which

1029 Congress in Section 5, paragraph 1 has specifically laid down only in the case of temporary arrangements which arise out of pooling or division of traffic, service or earnings. Economies in operation in merger and consolidation proceedings may be approved by the Commission, but not at a price which involves unreasonable restraint of competition. Competition in a real sense must be maintained.

4. The Commission considers at length motor truck operations outside the merger as related to segments of the existing operations of the individual carriers in the merger, and then finds:

"The foregoing clearly shows that if the proposed transaction is consummated, there would remain ample competitive motor carrier service throughout the territory involved," (p. 30).

5. This finding fails to meet the issue of fact on competition in these proceedings. What motor carrier competition will exist

for the proposed consolidated operations of the huge motor carrier here to be created? Following the above finding, and at pages 31 and 32, of its decision, the Commission seeks to meet this issue through argument and not a finding. Competition over segments of routes throughout the area is not competition for applicant whose operations would cover the Atlantic seaboard like a blanket. And reference to a Boston to New Orleans operation fails to deal with realities. The territory and traffic primarily here involved is the southern Atlantic seaboard area of the Carolinas and Georgia, extending to the industrial areas in the north. It is this operation which must be dealt with realistically and a finding made based upon substantial evidence. On this record the finding must be that if the proposed transaction is consummated there would remain no motor carrier service throughout this territory truly competitive to that of Associated Transport, Inc.

6. The majority Commission decision finds under the heading "Benefits of the Proposed Unification" that the merger "would result in improved transportation service, \* \* \*" and "would result in substantial operating economies," (p. 12). The evidence in support thereof consists of claims similar to those made in the first merger proceeding in Transport Co.—Control—Arrow Carrier Corp., 36 M. C. C. 61, wherein the Commission said:

"In the absence of evidence that similar consolidations or expansions of operations on such a large scale have produced results anticipated by applicant, the testimony with respect to proposed economies and improvements in service is not convincing."

7. There is no evidence in this record which supports a reversal of this finding. Commissioner Splawn in his dissenting opinion prefaces reference to this previous finding of the Commission with the following statement:

"The alleged opportunities for economy are vague and speculative, and the same general statement could probably be made with respect to any proposed consolidation," (p. 50).

8. The effect of the proposed merger will be to trade the known public benefits generated through existing competition (which the Commission finds to be substantial) for future promises. Moreover, the trade is to be made without an appraisal or evaluation by the Commission of the public benefits and economies which this substantial competition has produced. Such a one-sided trade is not in the public interest and cannot meet the criteria laid down by Congress. The value of the promised benefits resulting from the vast power here to be concentrated, criteria aside, is in no way commensurate with the value to the public of the substantial competition which would be eliminated by the merger. This, then, poses the ultimate question: Shall commerce moving over our public highways by carriers for hire be turned over to a few huge cor-

porations for their private gain or shall the public which owns the highways enjoy the benefits of competition between such carriers?

1030 Wherefore, the Antitrust Division, United States Department of Justice prays, that:

(1) the Commission reopen said proceedings for the purpose of taking testimony as set forth in Sections II and III hereof, and

(2) that reargument and reconsideration be had on the matters set forth in Section IV hereof, to the end that the vital public issues involved in these proceedings may be determined upon a complete record, and that due consideration be had of the legal and factual issues based thereon, and that the Commission issue such further order or orders in the premises as to it may seem reasonable and just.

Respectfully submitted.

(Signed) ARNE C. WIPRUD,

(Signed) FRANK COLEMAN,

(Signed) SMITH R. BRITTINGHAM, Jr.,

(Signed) WILLIAM R. KUEFFNER,

*Special Assistants to the Attorney General.*

(Signed) DAVID G. MACDONALD,

*Special Attorney.*

By Direction of:

THURMAN ARNOLD,

*Assistant Attorney General.*

Dated at Washington, D. C., April 9, 1942.

1031

#### CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each party.

Dated at Washington, D. C., this 10th day of April 1942.

(Signed) A. C. WIPRUD.

1032 Before the Interstate Commerce Commission

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Petition of the National Grange (1) for reopening and rehearing; (2) for reargument and reconsideration*

Filed April 10, 1942

Comes now your petitioner, The National Grange, party of record in these proceedings, and respectfully petitions the Commission (1) to reopen said proceedings for further hearing and (2) for reargument and reconsideration of the important national issues present, and in support of said petition says:

## I

That The National Grange, a corporation with principal offices at 1343 H Street NW., Washington, D. C., is a general farm organization with membership in 37 states approximating 800,000 members.

## II

That the purpose and function of The National Grange is to promote the interests of its members in agriculture, including the maintenance of low cost transportation for farm products and farm supplies and to that end to support the national policy of competition in the transportation industry.

1033

## III

That approximately 300,000 members of The National Grange are located in the Atlantic Seaboard and southern territory served by carriers parties to the above-captioned application, or their competitors and will be directly affected by any changes in rates, practices, operating policies or industrial conditions leading thereto.

## IV

That it is the belief of The National Grange that the creation of this motor carrier by merger of eight of the largest common carriers by motor vehicle in the affected area, together with recapitalization and issuance of securities to the public, and including, as it does, a substantial stock holding by a banking and

investment house with an established history of railroad affiliation, will prevent the maintenance of free competition in the transportation industry and will consequently be inimical to the public interest.

## V

That the report of the Commission approving the proposed merger contains findings of fact and law based upon insufficient evidence and founded upon an improper interpretation of the policy and provisions of the Transportation Act of 1940; and for the purpose of specific allegation and argument the National Grange hereby adopts and incorporates therein the Petition for Rehearing and Petition for Reconsideration filed by the Antitrust Division of the Department of Justice on April 9, 1942.

Wherefore The National Grange prays that the Commission reopen said proceeding and assign it for further hearing and that reargument and reconsideration be granted.

THE NATIONAL GRANGE,  
By (Signed) FRED BRECKMAN,  
*Washington Representative.*

Dated at Washington, D. C., April 9, 1942.

1034

## CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each party.

Dated at Washington, D. C., this 9th day of April 1942.

FRED BRECKMAN.

1035

Before the Interstate Commerce Commission

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Reply to petition of the Antitrust Division, United States Department of Justice, the National Grange, and the Secretary of Agriculture, for (1) Reopening and Rehearing; (2) Reargument and Reconsideration.*

Filed April 17, 1942

Notwithstanding the total insufficiencies of the matters contained in the petitions, even if true, to warrant the reopening of this case,

for the sake of the record Associated Transport, Inc., the respondent in these proceedings, respectfully replies to the above petitions as follows:<sup>1</sup>

## I

That the issues of general transportation importance involved in these proceedings are such as to necessitate the immediate denial of this petition.

## II

In view of the fact that Associated Transport, Inc. has been notified by the Transport Company of the Transport Company's decision not to acquire Arrow Carrier Corporation, and since, therefore, Associated Transport cannot acquire the Arrow stock, there could be no purpose in discussing the matters contained in paragraph II of the Department of Justice's petition.

## III

1036 The transpiration of the facts referred to above would seem to have dissipated the twin vampires of banker-railroad domination and monopoly but the pot continues to boil, the incantations still sound forth, and the awful spectacle of a Labor-Industry conspiracy and collusion forms in the steaming clouds above the brew.

Somewhere there must be reasonable limits beyond which performances of this sort may not be carried. At the inception of the proceedings, partially lulled by the apparent fairness of the original expressions of intention and attitude of the Antitrust Division's letter of August 15th, 1941, through which they sought to intervene, we refrained from raising objections to the propriety of such intervention. Later, when the nature and character of the attacks on the application assumed the proportions of a persecution, we contented ourselves with reliance upon the Commission's history and reputation for equity and fairplay, and the forthright nature of the decision in this matter has removed any natural fears that your Honorable Body can be confused by sleight of hand logic even in its most devious forms. Only regretting as citizens that a branch of the Government, called "Justice," can feel that hints, suggestions and innuendoes, calculated to arouse curiosity and create uncertainty and confusion, are honest substitutes for plain statements of fact in what amounts to an indictment of Associated's conduct, purposes and intentions, we reiterate our confidence that the Commission will speedily afford to this petition the shrift it so well deserves.

<sup>1</sup> Since petitions of the National Grange and the Secretary of Agriculture are in the nature of a "second" to the motion of the Department of Justice, this reply will not specifically refer further to their petitions.

A. The Associated Transport, Inc., has no intention or desire to commit economic suicide. It recognizes and proclaims the obvious fact that its future welfare is inevitably and unseverably an integral part of the motor trucking industry, and that only through cooperation, understanding and mutual trust on the part of carriers, large and small, whether in communities large or small, can there be a workable balance of power between employers and unions.

Associated Transport is bound by, and intends to abide fully with, the provisions of the National Labor Relations Act in its relationship to its employees. Because the overwhelming majority of the employees of its constituent companies are members of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, it announced its desire to negotiate a contract with the International Covering contingent displacements, transfers or hardships to employees as a result of the merger, rather than encountering the possibility of fixed conditions being imposed by the Commission in these changing times. In conversations had between the International and representatives of Associated weeks prior to the January 17th date referred to by the Antitrust Division, it was found that such desires were reciprocated by the International. We submit that such a meeting of the minds was and is to the great credit of both parties and potentially an important forward step and precedent in any future merger cases of motor carriers.

Associated's offer and intentions were definitely and fairly set forth and disclosed to the Commission and to the world in a prepared statement on that subject read into the record on Oral Argument.

The acquiescence in and acceptance by Labor of this offer was understood as fully and fairly set forth in the prepared statement which was read into the record on Oral Argument by their representatives.

1038 Associated has no agreement, express or implied, existent or contemplated, under which it could obtain "less onerous" terms from the International than any other operator so situated in any part of its territory. Furthermore, Associated has no desire to nor will it enter into such an agreement.

Perhaps many useful purposes will be served by taking this opportunity publicly to state that it is and will be the policy of Associated that:

(1) Associated's labor contracts in each community will be and must be negotiated separately with the appropriate Local of more than one hundred Local Unions having jurisdiction over its employees.

(2) Associated has not entered and will not enter into any contract more favorable to itself than the contracts of other operators performing similar work in a given community covered by such contract.

(3) Associated will, in the interests of the Country, the Industry, its employees, and itself, join with and seek the aid of all Operators, Union officials, the Rank and File of Labor, the Anti-trust Division, or anyone else, in a constant effort to correct and eliminate improper terms, conditions or persons from hindering or interfering in any way with the orderly and proper progress and future of the Trucking Industry.

(4) Associated does not and will not have any objection whatsoever to filing complete copies of any and all Labor contracts into which it enters with the Interstate Commerce Commission at any time the Commission may so desire or order.

B. Associated flatly affirms<sup>6</sup> that the motor carrier lines party to this merger have at no time had any plan (systematic or otherwise) of opposition to applications before the Commission concerning operating authorities of small independent motor carriers, and that whatever opposition has been offered in any 1039 case by any of the companies has been the result solely of the individual policies of such companies in the protection of their own business from what they believed to be efforts on the part of other carriers to obtain unwarranted rights, and that such individual policies were formulated by the individual carriers as far back as 1936, long prior to their being involved in the Transport application or any other application for merger. Illustrative of the fact that opposition to cases involving operating rights depends upon local conditions, the nature of the applications, and individual company policy, is the fact that examination of the records in the Commission's file would disclose that two of the larger carriers in the merger have opposed practically no cases of other operators. While it may be true that counsel for the Transport Company (applicant in a prior and different proceeding), because of the nature of his practice, represented protesting carriers in opposition to various then and subsequently pending cases, Associated cannot and should not be held responsible for such activity. Associated, up to the time of the acquisition of the stock of its constituent companies, does not and could not control the individual companies or the private practice of the lawyers who may have represented such individual companies. Certainly there can be no question but what the protests and opposition of other carriers, large and small, as well as the railroads, have been directed and concerted to the greatest degree against the constituent companies of Associated from 1936 on. We are not in a position to state whether it is railroad-truck opposition or the slowness

of administrative processes, delayed by lack of sufficient personnel and funds, which has in some cases retarded final determination of operating rights for so long.

We could hardly be expected to refrain from observing  
1040 in passing that perhaps it is the Conscience of the Antitrust

Division that is so ready to deplore the use of "procedural and other devices \* \* \* to delay and frustrate efforts \* \* \* to secure legal recognition of \* \* \* rights \* \* \* in the public interest." Expense, it appears, is always prohibitive except when it can be paid from taxpayers' money, and, in this case, our "efforts through protracted proceedings to establish and maintain" legal rights have certainly been "intensified" and apparently endless.

The suggestion that local interchange carriers have been bludgeoned into appearing and protesting applications of "small independent carriers," or else they would not have appeared, overlooks or discounts the obvious fact that such interchange carriers have the same proportionate financial interest as the large over-the-road carrier would have in preventing unnecessary and improper increase in competition, since the protested proposed competition must be for the same freight which both the larger carrier and the interchange carrier handle together. On this subject, we have previously, during this proceeding, felt required to comment on "the significant nature and potential connections and possible mutual or friendly interests of the opposition." Considering the "me too" nature of all of the documents submitted by the Office of the Secretary of Agriculture and the National Grange, one finds the Department of Justice's abhorrence of mutual use of "facilities, records and employees" extremely interesting. In any event, and even if the untrue accusation of the Antitrust Division on the subject of opposition to carriers had been a concerted scheme of the constituent companies of Associated Transport, we would be doubtful that the effectiveness of future opposition in such cases by Associated would be as great as that of these individual companies, particularly in the light of the illusion that must  
1041 have been partially created that this is a "huge merger."

C. There is nothing contained in III-1-(c) of the Department of Justice's petition which would seem to require any extended reply. Passing over, as we have in discussing (a) and (b), the Department's disdain of the Commission's reasonable rule requiring explanations as to why alleged "new evidence" could not have been discovered before, the freight which Associated Transport will move is the same freight which the constituent companies have moved for years. The Commission has full control over the upward or downward revision of rates. The rate bureaus are under and subject to the Commission's control. Because in Rate

Bureaus the votes of the majority of operating members control, and because the present number of Associated Constituent Companies' votes will be reduced to one in the Bureau, there is considerably more danger that the rate bureaus will dominate Associated than that Associated will dominate the rate bureaus. The subject of interchange carriers throughout the proceedings was exhaustingly explored by the Antitrust Division to the extent of unduly prolonging the hearings in this case. Indeed, we recall their expressed warnings to the Commission that, if the merger was approved, interchange carriers would receive no business from Associated. Now, it is claimed that Associated will give them so much business that it will own these interchange carriers Body and Soul. As we suggested in an earlier brief, too much time has already been consumed attempting to meet "flights of fancy and speculations wholly without basis in fact."

#### IV

Paragraph IV of the Antitrust Division's petition seems to reiterate the concepts of the Antitrust laws peculiar to its "property rights" as the paid Shepherd of the Antitrust sheep. 1042 These concepts, as we understand them, may be syllogized as follows:

(1) All unreasonable restraint of competition is forbidden by the Antitrust laws.

(2) All restraint of competition is unreasonable.

(3) Any reduction of competition is a restraint of competition.

Therefore any reduction of competition is an unreasonable restraint of competition.

Such "occupational" myopia, which blacks out any conception that Congress could have recognized reasonable restraints of competition in the public interest, must be the necessity for the marvelous non sequitur of Subdivision 3 of Paragraph IV of the petition to the effect that Paragraph 11 of Section 5 of the Interstate Commerce Act was written into the law solely to guaranty to parties to a merger that after the Commission (as they say it must) has found there was absolutely no reduction of competition this finding would be res adjudicata to prevent the Antitrust Division or anyone else from claiming in some other forum that there was a reduction of competition. While the acceptance of such reasoning would no doubt greatly simplify findings of fact and conclusions of law in merger cases by eliminating all but purely end to end combinations, it is hardly to be expected that the Interstate Commerce Commission should be required to accept such a ridiculous emasculation of its powers and of a law which it is charged to enforce to the end of developing and preserving a National

Transportation System to meet the needs of commerce and the National Defense.

Turning to the petition's discussion of "Benefits of the Proposed Unification," we find quoted, with favor, certain language from Transport Co.—Control—Arrow Carrier Corp., 36 M. C. C. 61, wherein the Commission said:

"In the absence of evidence that similar consolidations or expansions of operations on such a large scale have produced results anticipated by applicant, the testimony with respect to proposed economies and improvements in service is not convincing."

1043 Because Mr. Thurman Arnold, by whose direction this petition was submitted, taught so long and until so recently at the Yale Law School, it is interesting to note the comment of the Yale Law Journal, Volume 50, Page 1378, in the Issue of June 1941, with respect to this particular language. After characterizing the conclusion contained in the language as "cavalier", this leading article continued:

"Strictly interpreted and carefully observed, this dogmatism would bar unifications upon a scale more extensive than those now being successfully operated. Skepticism of optimistic estimates of economies is understandable, especially since expansions by Keeshin Transcontinental Freight Lines had portended similar savings which failed to materialize.<sup>2</sup> But to substitute for articulate analysis a rule of thumb which, if consistently applied, would freeze motor carrier operation at its present level is hardly understandable."

### V

It was with deep regret that the operators here involved learned from the Commission's opinion and the dissents thereto that apparently Associated's position with respect to the negligible precious metal contract operation of McCarthy Freight Lines was apparently not clearly spread upon the record during the hearings. Associated has no particular brief for that operation and sought its continuance solely as a convenience to the customer by whom it is utilized and because it seemed in no wise to conflict with other operations. However, since the decision apparently reserves to the Commission for future determination the question of  
1044 continuance of this operation, no harm has been done. Associated hereby agrees to discontinue the operation at any time the Commission may desire.

<sup>2</sup> It was and is the claim of Associated that the Keeshin expansion was badly conceived in that the operations were spread too thin and lacked sufficient overlapping or potential elimination of duplications to permit opportunities for substantial economies. The Antitrust Division, by attempting to forbid reasonable restraint of competition, would deprive Associated of what the operators believe, from their experience and studies, to be one of the most important and essential elements of a successful expansion. The other elements of course are management, purchasing power, financing, and proper territorial coverage. The Keeshin expansion may be said to have been deficient in everything but financing.

## VI

After lengthy and full consideration, the Commission rendered its considered decision in these proceedings.

The management of Associated Transport and its constituent companies deeply realize that the United States of America is engaged in a terrible war and that for years to come they must be concerned, to the exclusion of all else, with the preservation of their Industry, the prolongation of the life of their equipment, with what to use for tires and how to get gasoline in their efforts to contribute transportation to the country's defense, and last but not least, with the responsibility to the Interstate Commerce Commission and to their stockholders to prove that the trust which has been placed in their opinions and promises was not in vain so that this merger may truly be, as "Time" magazine said, "one of the good things to come out of the war."

## VII

That the undivided efforts of Associated Transport may be entirely devoted to its public purpose of providing safe, adequate and economical transportation, especially in these times, the petition of the Department of Justice, Antitrust Division, and the corollary petitions of the Secretary of Agriculture and the National Grange should be denied forthwith.

Respectfully submitted.

CLAUDE A. COCHRAN,

HUGH M. JOSELOFF,

(Signed) MORTIMER A. SULLIVAN,

*For Associated Transport Inc.,*

*1775 Broadway, New York City.*

Dated at New York, N. Y., April 15th, 1942.

1045

## CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each party.

Dated at New York, N. Y., this 17 day of April 1942.

B. D. RYAN

## Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION ET AL.

## Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Petition of the American Farm Bureau Federation (1) for leave  
to intervene; (2) for rehearing and reconsideration*

Filed April 22, 1942

Comes now your petitioner, the American Farm Bureau Federation, on its own behalf and on behalf of its member organizations, and (1) represents that it has an interest in the above-entitled proceedings and desires to intervene in and become a party to said proceeding, and (2) respectfully petitions the Commission to reopen said proceedings for further hearing and reconsideration of the important national issues present, and for grounds in support of said petition says:

## I

That the American Farm Bureau Federation, with principal offices at 58 East Washington Street, Chicago, Illinois, is an association of farmers in forty states.

## II

That the purpose and function of the American Farm Bureau Federation, among others, is to promote the interests of its members in the maintenance of low cost transportation for farm products and farm supplies and to that end to support the national policy of competition in the transportation industry.

## III

That many of the members of the American Farm Bureau Federation are located in the Atlantic Seaboard and southern territory served by carriers parties to the above-captioned application, are served by them or their competitors and will be directly affected by any change in rates, practices, operating policies, or industrial conditions leading thereto.

## IV

That it is the belief of the American Farm Bureau Federation that the creation of this huge motor carrier by merger of eight of the largest common carriers by motor vehicle in the affected area, together with recapitalization and issuance of securities to the public, and including, as it does, a substantial stock holding by a banking and investment house with an established history of railroad affiliation, will prevent the maintenance of free competition in the transportation industry and will consequently be inimical to the public interest.

1048

## V

That the report of the Commission approving the proposed merger contains findings of fact and law based upon insufficient evidence and founded upon improper interpretation of the policy and provisions of the Transportation Act of 1940 and for that purpose of specific allegation and argument the American Farm Bureau Federation hereby adopts and incorporates herein the Petition for Rehearing and Petition for Reconsideration filed by the Antitrust Division of the Department of Justice on April 9, 1942.

Wherefore the American Farm Bureau Federation prays leave to intervene in and become a party hereto with the right to have notice of and be heard by counsel or other authorized representative, at any further hearing, on brief and at any oral argument which may be granted; and prays that the Commission reopen said proceeding and assign it for further hearing and for reconsideration.

AMERICAN FARM BUREAU FEDERATION,

By: DONALD KIRKPATRICK,

Donald Kirkpatrick,

*General Counsel.*

Dated at Chicago, Illinois, April 8, 1942.

1049

Before the Interstate Commerce Commission

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Petition of the Virginia State Horticultural Society, Inc., by W. S. Campfield, Secty.; West Virginia State Horticultural Society, by Carroll R. Miller, Secty.; Maryland State Horticultural So-*

*ciety, by A. F. Vierheller, Secty.; Berks-Lehigh Mountain Fruit Growers, Inc., by L. E. Newcomer, Mgr.; Appalachian Apple Service, Inc., by Carroll R. Miller, Secty.*

Filed April 22, 1942

Come now your petitioners, Virginia State Horticultural Society, West Virginia State Horticultural Society, Maryland State Horticultural Society, Berks-Lehigh Mountain Fruit Growers, Inc., and Appalachian Apple Service, Inc., parties of record in these proceedings and respectfully petition the Commission to reopen said proceedings for further hearing; for reargument and reconsideration of the highly important issues present which are, in fact, of nation-wide importance, and in support thereof said petitioners say:

## I

(a) That the Virginia State Horticultural Society, Inc., its principal office at Staunton, Virginia, represents a membership of approximately 1,000 apple and peach growers and shippers in Virginia.

1050 (b) That the West Virginia State Horticultural Society, its principal office at Martinsburg, West Virginia, represents approximately 337 apple and peach growers in West Virginia.

(c) That the Maryland State Horticultural Society, its principal office at College Park, Maryland, represents approximately 175 members.

(d) That the Berks-Lehigh Mountain Fruit Growers, Inc., its principal office at Boyertown, Pennsylvania, represents approximately 55 fruit growers of said counties.

(e) That Appalachian Apple Service, Inc., its principal office at Martinsburg, West Virginia, represents approximately 501 apple and peach growers of Virginia, West Virginia, Maryland, and Pennsylvania.

That each of said above organizations was created and is maintained to promote the horticultural interests of their respective states and, among other things, to expand the distribution of the fruit of their members and encourage the maintenance of just, reasonable and nondiscriminatory freight rates and adequate transportation service by railroad as well as by highway.

## II

The above named organizations hereby urge the Commission to reopen said proceedings for the hearing of new evidence and for reargument and reconsideration because of the national impor-

tance of the issues involved, the decision of which will undoubtedly become a precedent to be followed in this formative period of a national policy toward highway transportation.

### III

That there is, in the past history of rail transportation, ample proof to justify the fear that the probable result of such an extensive merger as that proposed in these proceedings will lead to other giant trucking mergers that will ultimately cover the principal highways of the entire United States and develop sufficient political power and influence to greatly restrict and hamper the use of those public highways by smaller, independent commercial truck lines and private users.

### IV

That the granting of the proposed merger is not in the public interest and is not supported by the intent of Congress when the Transportation Act of 1940 was passed; and that such a merger would set in motion processes which, like the trend followed by the railroads, would ultimately lodge final control with selfish banking interests rather than with the much more efficient, practical, and experienced operating officials. The history and the present status of the railroads should stand as a danger signal to divert motor transportation from the pitfalls that they followed.

Therefore, we pray that the Commission reopen said proceedings and assign it for further hearing to consider new evidence and a reargument.

By (Signed) VIRGINIA STATE HORTICULTURAL SOCIETY,  
W. S. CAMPFIELD, *Secty.*  
WEST VIRGINIA STATE HORTICULTURAL SOCIETY,  
By CARROLL R. MILLER, *Secty.*  
MARYLAND STATE HORTICULTURAL SOCIETY.,  
By A. F. VIERHELLER, *Secty.*  
BERKS-LEHIGH MOUNTAIN FRUIT GROWERS, INC.,  
By O. L. E. NEWCOMER, *Mgr.*  
APPALACHIAN APPLE SERVICE, INC.,  
By CARROLL R. MILLER, *Secty.*

Dated at Staunton, Virginia, April 16, 1942.

1052

## CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each party.

Dated at Staunton, Virginia, this 16th day of April, 1942.

(Signed) W. S. CAMPFIELD.

1052-A

## ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 22nd day of April, A. D., 1942

No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION ET AL.

No. MC-F-1613

## ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

Upon consideration of the record in the above-entitled proceedings and of petitions of the Antitrust Division of the Department of Justice, The Secretary of Agriculture, The National Grange, Virginia State Horticultural Society, Inc., West Virginia State Horticultural Society, Maryland State Horticultural Society (including petition for leave to intervene), Berks-Lehigh Mountain Fruit Growers, Inc., Appalachian Apple Service, Inc., and the American Farm Bureau Federation (including petition for leave to intervene), for reopening, rehearing, reargument, and reconsideration by the Commission of its decision, entered March 16, 1942, in said proceedings, and good cause therefor appearing:

It is ordered, That said petitions be, and they are hereby, denied.  
By the Commission.

(SEAL)

W. P. BARTEL,  
*Secretary.*

1053 [Petition of Associated Transport, Inc., for conforming the order of March 16, 1942, of the Interstate Commerce Commission omitted. Printed side page. 84 ante.]

1057 [Order of I. C. C., June 8, 1942, Omitted. Printed side page. 88 ante.]

1

*Plaintiff's Exhibit 2*

Before the Interstate Commerce Commission

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

HEARING ROOM "B,"

I. C. C. BUILDING,

Washington, D. C., Monday, August 18, 1941.

Met, pursuant to notice, at 10 o'clock a. m.

Before VERNON V. BAKER, Examiner.

Appearances: C. A. Cochran, Law Building, Charlotte, N. C., appearing for Associated Transport, Inc. Hugh M. Joseloff, 410 Asylum Street, Hartford, Conn., appearing for Associated Transport, Inc. Mortimer Allen Sullivan, Prudential Building, Buffalo, N. Y., appearing for Associated Transport, Inc. J. D. Lawson, P. O. Drawer 540, Charlotte, N. C., appearing for Horton Motor Lines, Inc. Fred A. Tobin, 932 Bowen Building, 815 Fifteenth Street, NW., Washington, D. C., appearing for International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Warren Woods (Roberts & McInnis), 735 Transportation Building, Washington, D. C., appearing for Andrew B. Crichton et al., doing business as Super Service Motor Freight Company. John M. Miller, First National Bank Building, Kingsport, Tenn., appearing for The Mason and Dixon Lines, Incorporated, Kingsport, Tenn., Akers Motor Lines, Gastonia, N. C., Atlanta-Union Point Trucking Company, Inc., Greensboro, Ga., Benton Rapid Express, Savannah, Ga., Blue Ridge Trucking Company, Asheville, N. C., Cedartown-Atlanta Freight Line, Cedartown, Ga., Cumberland Freight Lines, Inc., Nashville, Tenn., Dixie Freight Lines, Atlanta, Ga., J. D. Jordan Truck Line, Centre, Ala., Lewis & Holmes Motor Freight Corporation, High Point, N. C., Mathews Freight Lines, Inc., Thomaston, Ga., New South Express Lines, Inc., Columbia, S. C., R.-C. Motor Lines, Inc., Jacksonville, Fla., Smith Transfer Corporation, Lenoir, N. C., Southern Motor Express, Birmingham, Ala., Wilson Truck Company, Nashville, Tenn., A. A. A. Highway Express,

Inc., Atlanta, Ga., Great Southern Trucking Company, Jacksonville, Fla., Booze Truck Lines, Roanoke, Va., Colonial Motor Freight Line, High Point, N. C. Charles J. Fagg, 24 Branford Place, Newark, N. J., appearing for Middle Atlantic Shippers Motor Carrier Committee, Newark Chamber of Commerce.

3 W. G. Burnette, 209 Lynch Building, Lynchburg, Va., appearing for Chamber of Commerce. Floyd F. Shields, 221 West Roosevelt Road, Chicago, Ill., appearing for Keeshin Freight Lines, Inc., Keeshin Motor Express Company, Inc., Seaboard Freight Lines, Incorporated. Arne C. Wiprud and Smith R. Brittingham, Jr., Special Assistants to the U. S. Attorney General, 3311 Department of Justice Building, Washington, D. C., appearing for Antitrust Division, Department of Justice, Washington, D. C. Joseph W. Connolly, No. 1 Franklin Street, Alexandria, Va., Ford Motor Company. James D. Mann, 450 Munsey Building, Washington, D. C., appearing for The National Industrial Traffic League.

5

### *Proceedings*

**Exam. BAKER.** Come to order, please.

The Interstate Commerce Commission has set for hearing at this time and place the following applications:

No. MC-F-1612, being the application of Associated Transport, Inc., for authority, under section 5 of the Interstate Commerce Act, to acquire control of the ownership of the stock, and thereafter to consolidate into itself the properties of Arrow Carrier Corporation, Barnwell Brothers, Inc., Consolidated Motor Lines, Inc., Horton Motor Lines, Inc., McCarthy Freight System, Inc., M. Moran Transportation Lines, Inc., Southeastern Motor Lines, Inc., and Transportation, Inc.

The second application, No. MC-F-1613, being the application of Associated Transport, Inc., for authority, under section 214 of the Interstate Commerce Act, to issue securities.

Off the record, now, Mr. Reporter.

(Statement by the Examiner off the record.)

**Exam. BAKER.** I will next call for appearances. In entering your appearances, please state your full name and address, whether you are a registered practitioner before this Commission, the party whom you represent, the position which you propose to take in this proceeding, and your interest therein. I will first call for appearances for the applicant.

**Mr. COCHRAN:** C. A. Cochran, Law Building, Charlotte, N. C., appearing for Associated Transport, Inc., applicant.

6 **Mr. JOSELOFF.** Hugh M. Joseloff, 410 Asylum Street, Hartford, Conn., appearing for Applicant. I am a registered practitioner.

Exam. BAKER. Mr. Cochran, are you a registered practitioner?

Mr. COCHRAN. I am.

Mr. SULLIVAN. Mortimer Allen Sullivan, Prudential Building, Buffalo, N. Y., appearing for the applicant. I am a registered practitioner.

Exam. BAKER. Are there any appearances for intervenors in support of the application?

Mr. LAWSON. J. D. Lawson, P. O. Drawer 540, Charlotte, N. C., appearing for Horton Motor Lines, Inc., supporting the application. I am a registered practitioner.

Exam. BAKER. Are there any appearances for protestants?

Mr. TOBIN. Fred A. Tobin, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, 932 Bowen Building, Washington, D. C. I am a registered practitioner. I also wish to note the appearance of Mr. Joseph A. Padway, general counsel of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America.

Exam. BAKER. Mr. Tobin, are you entering your appearance as a protestant in opposition to the application?

7 Mr. TOBIN. That is right.

Exam. BAKER. Is Mr. Padway present?

Mr. TOBIN. No; he is not present, but he will be in here shortly.

Exam. BAKER. Well, will you have him enter his appearance personally when he arrives?

Mr. TOBIN. Yes, Sir.

Exam. BAKER. Are there any further appearances for protestants?

Mr. WOODS. Warren Woods, 735 Transportation Building, Washington, D. C., I am not a registered practitioner, but I am an applicant for admission to the bar of the Interstate Commerce Commission. I am with Roberts & McInnis.

Exam. BAKER. Have you appeared in any other proceedings before the Interstate Commerce Commission, Mr. Woods?

Mr. WOODS. I appeared in one proceeding, in Jackson, Miss. My application has been in since early June of this year.

Exam. BAKER. When was that other proceeding held?

Mr. WOODS. The other proceeding started on June 23d.

Exam. BAKER. Of this year?

Mr. WOODS. That is correct. It is not yet concluded, however.

Exam. BAKER. Mr. Woods, it will be necessary that you  
8 secure special permission from the Secretary to participate in this proceeding. I suggest that you contact the Secretary's office, which is on the second floor of this building.

Mr. WOODS. Very well. May I state the interests which we represent?

Exam. BAKER. Yes.

**Mr. Woods.** We are representing, as a protestant and intervenor here, the Super Service Motor Freight Company, a partnership composed of Andrew B. Crichton et al., doing business under the name of Super Service Motor Freight Company.

**Exam. BAKER.** Very well.

**Mr. Woods.** With offices in Nashville; Tenn. It is a participating carrier, competitive with certain carriers involved in this application.

**Exam. BAKER.** Very well, Mr. Wood. I would suggest that you immediately contact the Secretary's office.

**Mr. Woods.** I will do that immediately.

**Exam. BAKER.** Are there any further appearances for protestants?

**Mr. MILLER.** I would like to enter my appearance, Mr. Examiner—John M. Miller, and that of J. B. Dempsey, First National Bank Building, Kingsport, Tenn., representing the Mason & Dixon Lines, Inc., Kingsport, Tenn., and other carriers. We are intervening to protect our interests, wherever they may appear.

9 **Exam. BAKER.** Is Mr. Dempsey present in the hearing room?

**Mr. MILLER.** He will be here shortly.

**Exam. BAKER.** Will you have him enter his appearance when he arrives, please?

**Mr. MILLER.** All right, sir.

**Mr. SULLIVAN.** May we have in the record the names of the other carriers referred to, Mr. Examiner. I notice that he said "and other carriers."

**Exam. BAKER.** Will you please read the list of the carriers you represent, Mr. Miller?

**Mr. MILLER.** There are twenty of them: The Mason and Dixon Lines, Incorporated, Kingsport, Tenn.; Akers Motor Lines, Gastonia, N. C.; Atlanta-Union Point Trucking Company, Inc., Grennsboro, Ga.; Benton Rapid Express, Savannah, Ga.; Blue Ridge Trucking Company, Asheville, N. C.; Cedartown-Atlanta Freight Line, Cedartown, Ga.; Cumberland Freight Lines, Inc., Nashville, Tenn.; Dixie Freight Lines, Atlanta, Ga.; J. D. Jordan Truck Line, Centre, Ala.; Lewis & Holmes Motor Freight Corporation, High Point, N. C.; Mathews Freight Line, Inc., Thomaston, Ga.; New South Express Lines, Inc., Columbia, S. C.; R-C Motor Lines, Inc., Jacksonville, Fla.; Smith Transfer Corporation,

10 Lenoir, N. C.; Southern Motor Express, Birmingham, Ala.;

Wilson Truck Company, Nashville, Tenn.; A. A. A. Highway Express, Inc., Atlanta, Ga.; Great Southern Trucking Company, Jacksonville, Fla.; Booze Truck Line, Roanoke, Va.; Colonial Motor Freight Line, High Point, N. C.

Exam. BAKER. Mr. Miller, did you state whether you were a registered practitioner?

Mr. MILLER. I am.

Mr. SULLIVAN. Are we to understand, Mr. Examiner, that all of those are common carriers—certificated common carriers? I am asking that because the description would imply carrying performance other than the Mason & Dixon.

Exam. BAKER. Will you answer that, Mr. Miller?

Mr. MILLER. They are.

Exam. BAKER. Mr. Miller, has each of those carriers authorized your appearance of record here?

Mr. MILLER. They have.

Exam. BAKER. Are there any further appearances for protestants?

Mr. FAGG. Mr. Examiner, Charles J. Fagg, representing Middle Atlantic Shippers Motor Carrier Committee. Our position cannot be determined at this time. We are here to listen to the  
11 evidence and protect our interests as they may appear. I should also like to have the privilege, Mr. Examiner, if you will permit, to enter the appearance of William H. Ott as  
" representing the Middle Atlantic Shippers Motor Carrier Committee, Chicago, Ill. Mr. Ott had to be in San Francisco today, and cannot be here for three or four days. Both of us are practitioners before the Commission.

Exam. BAKER. We really do not permit the acceptance of an appearance in the absence of the party, Mr. Fagg. When Mr. Ott arrives we will be glad to have him enter his appearance at that time.

Mr. FAGO. Thank you, sir.

Exam. BAKER. Are there any appearances for other intervenors?

Mr. BURNETTE. W. G. Burnette, 209 Lynch Building, Lynchburg, Va., representing the Lynchburg Chamber of Commerce. I am a registered practitioner, and I am appearing in this proceeding to protect our interests wherever they may appear.

Mr. SHIELDS. Floyd F. Shields, 221 West Roosevelt Road, Chicago, Ill., appearing for Keeshin Freight Lines, Inc., Keeshin Motor Express Company, Inc., and Seaboard Freight Lines, Incorporated. The carriers that I have just named are common carriers, certificated under the Act. The first named is the holding company that owns the stock in the other two. They operate as common carriers substantially in the northern half  
12 of the territory involved in this application. I have been admitted to practice before this Commission.

Mr. WIPRUD. Smith R. Brittingham, Jr., and Arne C. Wiprud, special assistants to the Attorney General, representing the Anti-

Trust Division of the Department of Justice. I am admitted to practice before the Commission, but Mr. Brittingham is not. The position of the Antitrust Division of the Department of Justice is stated in a letter to the Commission, and upon which the Commission has entered its order, allowing leave to intervene.

Mr. Brittingham is present in the hearing room; is he not?

Mr. WIPRUD. He is present.

EXAM. BAKER. Mr. Brittingham, have you appeared in any other proceedings before the Commission?

Mr. BRITTINGHAM. No, sir; I have not.

EXAM. BAKER. Very well. You will be permitted to participate in this proceeding. For the benefit of any of the parties who may not have received a copy of the order of the Commission permitting intervention by the Department of Justice, which order was signed last Saturday, August 16th, I would like to read a paragraph of the letter which was referred to by Mr. Wiprud.

The letter is addressed to: Honorable Joseph B. Eastman, Chairman, Interstate Commerce Commission, Washington, D. C.

13 My dear Mr. Chairman:

"I understand that a hearing on the application of Associated Transport, Inc., for approval of a proposed unification of numerous motor truck carriers along the Atlantic Seaboard has been set for August 18, 1941. I would like to request that representatives of the Antitrust Division be given the privilege of appearing before your Commission and presenting evidence bearing on the question of whether the proposed unification unduly restrains competition in the transportation field.

The reason for my request is that jurisdiction to determine whether unification of carriers unduly restrains competition has been given to the Interstate Commerce Commission. The Antitrust Division is the only Government agency in a position to present evidence on the monopoly question from a point of view of the public interest. Evidence presented by private parties necessarily must be colored by their own property interests in the controversy."

The letter also requests that 30 days' time be given the Antitrust Division in order to furnish the Commission with evidence to complete its order. The order permitting intervention by the Antitrust Division did not grant such request. Whether or not the representatives of the Department of Justice plan to renew their request is a matter that will be developed in the course of the hearing.

14 Are there any further appearances?

In the interest of expediting the hearing on this application, Division 4 has directed that the application and accompanying exhibits shall constitute part of the record herein without

special admission or incorporation, but that this special rule shall not dispense with the necessity of proof of the facts alleged, if the facts are challenged by any opposing party.

In prior proceedings before this Commission, in Nos. MC-F-1223, 1244, and 1264, being applications of the Transport Company for authority to acquire control of certain motor carriers, including those here involved, there were filed copies of the articles of incorporation of each of the carriers involved in this proceeding.

May it be stipulated that such articles of incorporation, with the amendments filed in those dockets, may be incorporated in this record by reference?

Mr. COCHRAN. We would like to have that done, sir.

Exam. BAKER. Is there any objection to that?

Such documents will be so incorporated.

Applicant's counsel will be expected during the course of the hearing to develop whether or ~~not~~ there have been any amendments to such articles since the ~~date~~ of the hearing in the prior proceeding, and, if so, to introduce such copies of the amendments into this record.

15 At the conclusion of the hearing the parties will be requested to indicate whether or not they desire a proposed report by the Examiner. The announcement is made at this time in order that consideration may be given to it throughout the course of the hearing. If any of the parties present at this time depart the hearing prior to the close, unless they indicate otherwise, it will be taken that they consent to any agreement that may be reached at the close of the hearing by the parties then present, with respect to the proposed report.

The applicant may proceed.

Mr. COCHRAN. Mr. Examiner, in order that you may understand what we have in mind as to procedure, I would like to state that our first witness will be Mr. Horton, who will confine his testimony to the organization of the applicant and the facts set out in the application, but with reference to the applicant specifically. He will be followed by Mr. Seymour, who executed the contract, and thereafter we will take up the individual companies and present such evidence as may be necessary to complete the picture. As to just the order in which those companies will come on, I am not quite able to state at this time, but on account of certain persons who are connected with those companies having business engagements or other engagements that are very pressing, it may be that we will rearrange the order presenting our evidence; but during today or tomorrow we will let you know exactly

16 —how we will proceed.

I would like at this point to have Mr. Horton come around and take the stand.

H. D. HORTON, being first duly sworn, testified as follows:

Direct examination by Mr. COCHRAN:

Q. State your name and place of business, Mr. Horton.

A. H. D. Horton, Charlotte, N. C.

Q. Mr. Horton, what are your present business connections?

A. I am president and chairman of the board of Horton Motor Lines, Inc., chairman of the board of Conger Realty Company, Inc., and chairman of the board of Brown Equipment & Manufacturing Company, Inc., all of Charlotte, N. C.

Q. What position do you hold with respect to Associated Transport, Inc., the applicant in this hearing?

A. I am chairman of the board.

Q. Are you a director of that company?

A. And a director; yes.

Q. Mr. Horton, what has been your business experience?

A. From 1914 to 1918 I was in the retail and wholesale tire, battery, and accessories business. In 1928 I became operating receiver of B. F. Withers, Jr., Inc., a contract carrier operation serving the A. & P. Tea Company in the Carolinas. After a  
17 little more than two years I paid out this receivership and bought the operation, and continued to conduct that operation for several years, until it was sold in 1939. In 1931, I started a common carrier operation from North Carolina to Philadelphia and New York and gradually expanded that operation by serving the territories surrounding Wilkes-Barre and Scranton, Pa., Cumberland, Md., Greenville, S. C., Pittsburgh, Pa., and later by acquisitions of other trucking companies, heard before this Commission. I bought the Mauer Transfer Company of Rome, Ga., and Poole Transport Company, Inc., Greenville, S. C., and merged them with my own operation.

Q. You are presently the head of and have charge of all of the operations of Horton Lines?

A. Yes, sir.

Q. Have you any financial interest or any connection with any common carrier by motor, rail or water, other than Horton Motor Lines?

A. None whatsoever.

Q. Have you made any study of the transportation by motor of freight along the Atlantic Seaboard?

A. Yes; I have made many studies, the most important of which, I guess, is the study of the operation that has resulted in this application now being heard before the Commission.

Q. In attempting to put into effect the studies which you  
18 made, are the results that you have—

A. This application is an attempt to put into form and test the conclusions reached in those studies.

Q. Will you give a detailed history of the organization of the applicant company, and what led up to its organization?

A. Last year I had occasion to make a more detailed study of the operations along the Atlantic Seaboard, that is, of all the operations in the territory in which we operate, and in those in which we might contemplate operation at any time in the future, and it became evident to me, if properly put together, a very much finer transportation system by motor truck could be developed that was then in existence in that territory. At the same time, a much better service could be produced for the public, and economies could be effected, which would make the operations much more stable.

I have been much concerned in the last two or three years in watching the growth of my own company, and in knowing that I would eventually face a critical situation unless something could be done to strengthen my company and its possibilities of continuing to serve the public on into the future, at which time it might be expected that business would decline.

My own company has had an average growth of approximately 35 percent per year for a good many years. It has now reached a point where a 35 percent increase in its growth logically requires approximately that amount of additional equipment with which to do business, and since we now have in service in excess of \$2,000,000 of equipment, my task of providing 35 percent increase in that, or, roughly, \$700,000, becomes a burden.

Increased income taxes, excise taxes, and all of the taxes that may apply to the business have two effects. One is to reduce the profit from the common carrier operation, and the second is to leave in the hands of the owners of the business, after the payment of income taxes and profit taxes, less moneys out of which to take care of the requirements for the growth of the company. So I found our company in the position of being unable, without getting itself in a credit position that I consider very dangerous, to supply equipment to take care of the increasing business.

I said that our business had increased on an average of 35 percent over quite a long time. It is even increasing now. In the first half of this year, as compared with the first half of last year, the increase is 37.5 percent. We see no indication from our contacts with our shippers and from the development of additional business within the territory that we serve, that that percentage of increase is likely to be any less for some time in the future.

We are in a very peculiar position as a common carrier operation that we serve, since our Government has decided on a rearmament program and on preparing the country for

defense. It has been calling on the manufacturing ability of New England to a very large extent, particularly for materials and supplies and parts necessary to build and maintain an air force, and of the 200-odd airports that the Government has decided to develop and which it is in the process of developing, forty-odd of those are in New England and 45 or 46 are in the southern end of our territory, comprising, roughly, Virginia, the Carolinas, and Georgia. The flow of materials to supply the aircraft and necessary for the defense of our country comes primarily from New England and New York State. There is a very large aviation motor plant in Paterson, N. J., Wright Aeronautical. There was another one recently opened, within the last week or two, in Buffalo, a tremendous one. Pratt & Whitney are in Hartford, Conn.; Hamilton Propellers are in Connecticut; and many other parts manufacturers are in that territory; and we are finding an increase in the flow of materials into the camps, the forts, ship-building yards, and airports in the Southeastern territory.

Q. Certain of those are located in Florida, are they not?

A. They pretty well belt the Coast from the North down to around Mobile, evidently for the protection of the southeastern corner of the United States. So this tremendous increase in business which we have been experiencing for several years, as  
21 we have been digging our way out of the depression, is now augmented by the tremendous increase in defense, and the defense activity, particularly in the South, has produced another very important phase.

Many of the people in the South who, in past years, during the depression, had not had any too much income, are now being occupied in the building of cantonments, camps, forts, airports, et cetera, at much higher wages than they had been previously accustomed to receive, and a very large share of that money is going into the purchase of the things that people wish to have, in addition to the necessities of life. So that the increase in the flow of merchandise, of raw materials, from the Textile South up to the Manufacturing East, and the flow back of finished materials, cloth, shoes, and all of the things that people consume, are increasing sharply, in addition to the increased movement of freight for defense purposes.

So I found myself in the position of having to supply, either out of cash, which we do not have, or out of credit, which may be obtained either from banks or from finance companies, to take care of the purchase of a very large amount of equipment. My own business experience, having lived through three periods of sharply receding business, indicates to me that if I wish to produce  
22 the greatest element of security that I can for my business, for myself and for my family, I will have to maintain the

strongest possible financial position for the next several years. It has been my experience, and probably the history of business cycles would indicate that when business goes up sharply for a period of years, it is followed by a decline. That decline is one of the things that disturb me at this time.

I may be able to provide Horton Motor Lines with some additional equipment year after year out of its own profits, but I do not think I could provide it with the equipment necessary to take care of the increasing demands of our customers, and I would not be able to protect it against the dangerous position of being extended creditwise if and when the downswing in business may occur. I have talked with many of the heads of the companies applicant in this application, and others, and I find that their situation is approximately the same.

The percentage growth of Consolidated Motor Lines, a very large operation in New England, was about 34.5 percent for the first half of this year, as compared with the first half of last year. McCarthy's increase was 39.9 percent. That illustrates that the increase in business of my company is not peculiar to that company alone. It goes to all these other companies, too.

23 We have found also, and we have been told—I was told in a group not many weeks ago that met with Mr. Knudsen, Mr. Stettinius, and other members of the Defense Commission, in an appeal not to limit or not to cut the production of trucks, that we could not be expected to receive any time in the near future the amount of truck equipment that might be required to take care of all of the demands of all carriers, but that we were definitely and positively assured that we would be given parts, repair parts, and materials, to maintain in service the equipment we are now using. So these other companies, with which I have talked many times, have indicated that they are in the same dangerous position that we are. We wish to provide more transportation. It is needed, and will be more badly needed even before this year is out. I recall that in Mr. Eastman's report to Congress covering the year 1939, he called to their attention that in October of that year the rails had reached almost their total ability to provide transportation service for this country, and at that time their weekly average or carloadings was about 860,000 cars.

Mr. FAGO. What was that figure again?

The WITNESS. 860,000 cars.

Later, in conference with various governmental officials—I think under the auspices of the Federal Reserve System, but I am not positive about that—highway transport representatives, 24 coastwise steamer lines, representatives of railroads, our lines, and other transportation agencies were asked to give

their thoughts as to the ability of the transport systems of the country to serve the needs of the country, and in the statements made by the representatives of railroads at that time they stated they they were finding themselves in the position of not being able to get as speedy delivery on cars and locomotives as the increased traffic required. The rails presently are moving between 875,000 and 950,000 carloads weekly, and, in my opinion, that is very close to their 100 percent ability to provide transportation service.

Mr. FAGG. Mr. Examiner, I have no objection to this, but—

Mr. COCHRAN. I realize that it is—

Mr. FAGG. That is with reference to the rail companies carrying over 900,000 cars.

Exam. BAKER. Your motion will be granted.

The WITNESS. Then, I have to ask you, Mr. Examiner, whether or not I can make reference to the fact that coastwise steamers have been withdrawn from that service?

By Mr. COCHRAN:

Let me ask you a question there. Will you tell us the reasons which impel you to go to work and bring about the consolidation of these companies and what you did in that connection?

A. I am probably elaborating a little too much, but the point I am making is that one of the reasons, and a very strong reason, that made me go to these men and see if we could effect  
25 this merger—

Q. Yes; go ahead. Continue.

A. As a result of the conferences that I have had with these men, and having found them concerned with the same general things that have concerned me, I then took the entire matter as it at that time appeared to me to Mr. Seymour.

Q. Who is Mr. Seymour, and what is your relation to him?

A. Mr. Seymour is the man who last year was the president of the Transport Company, and I sold our company into the Transport Company, and in those negotiations and in many meetings following those negotiations, I came to know Mr. Seymour very well indeed.

Exam. BAKER. That is the Transport Company?

The WITNESS. The corporation which was the applicant in the proceeding before this Commission; yes, sir; which was denied last year.

Exam. BAKER. MC-F-1223?

The WITNESS. Yes, sir. So I have developed a great deal of confidence in Mr. Seymour and a considerable respect for his sound business judgment. I knew him to have given much of his own time to something like a similar study as to operations along the Atlantic Seaboard, and I took those to Mr. Seymour and was able

to interest him in the matter, and after making still more detailed studies as to the territory in which we might hope to operate, if such an application as this were approved, the kinds of service to be performed and the diversified numbers of commodities to be served, we then called in the heads of some of the companies that we thought might best fit into the picture that we were trying to put together. We had Mr. Seymour call these people in at meetings in his office many times. We had a series of meetings, lasting days and nights for weeks, at which time many of the differences of opinion were argued out, until, it seems, we finally came to a meeting of the minds. In the latter part of those meetings, collectively we developed the provisions which now constitute the contract of which we are signers.

By Mr. COCHRAN:

Q. The first step was the organization of Associated Transport, Inc., or at least that was the general sentiment during those conversations?

A. Yes, sir. During those conferences it was decided by the group that Transport Company, Inc., should be incorporated.

Q. Why was it incorporated and who were its officers and directors?

A. It was incorporated with Mr. Seymour, president; Mr. Hellman, as treasurer, and Miss Ryan as secretary, and myself was chairman of the board. Later the office of treasurer was made vacant, when Mr. Hellman went with Mr. Davis and Mr. Arnstein to China to attempt to keep the Burma Road open. He is over there now.

Q. Who was elected to his place as treasurer of the company?

27 A. I think Mr. Seymour was elected.

Q. And he is now president and treasurer; is that correct?

A. Yes; he is now president and treasurer. We sent out a list of a great number of names of all those suggested by all the group, and they checked the names that might be available for use in the States in which we operate, and among the three or four names that came back I find the name of an organization——

Q. Corporation Trust Company?

A. Corporation Trust Company.

Q. Why was Associated Transport, Inc., organized; what was the purpose back of the organization back of it?

A. Associated Transport was organized as the vehicle through which it would be most convenient for those companies to work out their affairs, and it was about the only way it could be done for developing among ourselves a recognition of our common problem and common danger, which could best be served by a 100 percent

exchange of stock, and to do that it was most practical and most workable to have an organization such as Associated Transport, through which it could be accomplished, and that is the purpose of the formation of Associated Transport, Inc., primarily.

Q. After the organization, did you continue your efforts to bring these people into the group?

A. Yes; that was done during our conferences. We had to have conferences every week for months.

28 Q. Do you recall the date when the contract was signed among all these companies?

A. June 11 of this year.

Q. Name the companies executing the contract.

A. Consolidated Motor Lines; McCarthy Freight System; M. Moran Transportation Company; Arrow Carrier Company; Barnwell Brothers, Inc.; Horton Motor Lines; Southeastern Motor Lines, and Transportation, Inc.; these eight carrier companies.

Q. Can you name the affiliated companies?

A. The four affiliated companies, noncarrier companies, are Brown Equipment & Manufacturing Company, Conger Realty Company—

Q. Barnwell Warehouse—

A. Barnwell Warehouse & Storage.

Q. Yes.

A. And one other in New England.

Q. Southern New England?

A. Southern New England Terminals.

Q. And you spoke to the heads of these companies during these conferences. To what particular persons, do you recall?

A. Well, of course, when I mentioned the heads of the companies, I meant, in the case of the Consolidated, Mr. Everett Arbour, chairman of the board of Consolidated; Mr. John McCarthy, president and chairman of the board of McCarthy

Freight System; Mr. Bob Barnwell, president of Barnwell  
29 Brothers, Inc.; Mr. Cliff Brock, president of Southeastern Motor Lines. That is the type of men I mean when I said I

spoke to the heads of the companies. You see, I have known these men for many years. We had been acquainted even before the code days, and at that particular time, I remember, I was a member of the National Code Authority, and had many meetings with these gentlemen, and after that we had many meetings in the formation of our Association, the National Trucking Association. I have known the heads of those companies for many years.

Q. Why did you select those men, you and Mr. Seymour, for the carrying on of the conferences with those particular companies?

A. For two reasons. One was on account of the territory covered. The natural flow of freight is up and down the Atlantic

Seaboard, and these companies, when properly integrated, would finally make the finest highway transportation system in the world, because it would mean the elimination of considerable delay, and the elimination of considerable expense in overhead and duplicate operations. We took all those things into consideration. We considered further the types of companies and, in the case of Moran, Moran has a considerable volume of business which we call in the business "peddler" runs. McCarthy has a considerable of what

30 might be called "short line" runs, 30 or 60 miles. In the case of Southeastern and Horton and Barnwell, they have long operations, running 500 to 600 or 800 miles. So we had the feeling that such a combination would make a strong transportation system.

We considered very closely the territories to be served, recognizing the kinship between the textile plants in the South and the textile plants up in New England. We recognized that there was a natural flow of freight that might be expected for many years between the textile Carolinas and Virginia and the New England States. We recognized that there was a tremendous manufacture in New York State, Syracuse, Binghamton, and many of those cities—materials, supplies, machinery—that move into the South, and from the South into New England. These companies were also selected because they have a long record of credit and earnings behind them. They are strong, stable companies, and we wish to put this thing together in an operation which would be successful from a high earning standpoint, so that it could be kept and maintained in a sound position, and these companies provide that situation.

Consolidated is a very fine operation in New England, and when used in conjunction with McCarthy probably will take care of every reasonable shipper needs in that territory, and when combined with the service available by Southeastern, Horton, and  
31 Barnwell, moving farther south on the Atlantic Seaboard than New York, would provide a transportation system beyond those areas which it would be hard to surpass.

Q. In carrying out this idea, did you consider the position of each of those companies very important?

A. Yes, sir; very important. One of the very important reasons for putting this thing on a wholly 100 percent exchange of stock theory was to keep in the company the people who developed those companies, and nobody can tell—I certainly would not like any kind of a deal in which my company became a part, if Everett Arbor and Bob Barnwell, and John McCarthy, and all those men moved out. I would not have the ability to run such a transportation system. They can be expected to continue to maintain

their full financial interest in this kind of a deal, and they will furnish just as much effort in making this kind of an operation a success because their livelihood and their future will go into that job, and they have told me that they propose to do this, and I have told them that I propose to stay in and work. There is nobody selling out; there is no selling out.

Q. I believe you stated that these contracts between these various companies and Associated Transport, Inc., were signed on June 11, 1941.

A. Yes.

Q. On the date of the signing of those contracts, what additions were made to the directorate of Associated Transport, Inc.?

A. The contracts were all signed simultaneously, and at that same time Mr. R. W. Barnwell, president of Barnwell Brothers, was elected to the board of directors; Mr. John G. McCarthy, president of the McCarthy system, was elected on the board of directors; Mr. Everett J. Arbour, chairman of that board, was elected on the board of directors; Mr. Clifford Brock, president of Southeastern, was elected on the board of directors; Mr. Wiley Moore, a majority owner of Transportation, Inc., was elected on the board of directors; I was already on the board; Mr. Seymour was on the board.

Q. In other words, a key man from each of those companies was elected to the board of directors of Associated Transport, Inc.

A. Right.

Exam. BAKER. While you are speaking of the directors, you might identify J. S. Arnold. I believe he is also a member.

The Witness. J. S. Arnold is representing the Transportation Company, who are the present owners of Arrow Carrier Corporation.

By Mr. COCHRAN:

Q. I believe every carrier came into this group through Transport; is that correct?

A. That is correct; they came in through Transport and Transport owned Arrow.

Q. They had purchased an option.

A. Yes; they had purchased an option.

33 Q. To the total stock, the preferred stock, as set forth in the exhibit attached to the application.

A. Yes, sir.

Q. I want to go back and ask you one question with reference to Associated Transport, Inc. Under the laws of what State was that incorporated?

A. Delaware.

**Q.** Speaking of the key men of each of these companies, what is contemplated with respect to the position they will occupy in Associated Transport, Inc., if and when it becomes an operating unit?

**A.** Those key men are expected and have indicated that they will continue to operate the companies that they are not now operating. In addition, as members of the board of directors of Associated Transport, they will develop the policies of Associated Transport, but they will have to operate their business as they have in the past.

**Q.** In the event of—

**A.** None of those men go out; they are all being used in the company.

**Q.** In the event of the consolidation of these lines, or any of them, would that eliminate any of these directors?

**A.** None whatsoever. They would continue to serve as directors in charge of divisions of Associated Transport.

**Q.** It is contemplated, is it not, Mr. Horton, that as soon as sound business conditions would justify it, and upon approval of the Commission to consolidate—

**A.** It is.

**Q.** Please wait until I have finished—that all or at least part of these companies are going to be under unified control.

**A.** It is, and Associated Transport is now ready and willing to bring about such integration or unification just as fast as the legal requirements permit, and by "legal requirements" I mean the requirements of the various States as to registration, insurance requirements, and the time in either getting out from under or buying out or eliminating leases and providing facilities to take care of combined operations. Associated Transport stands ready to do all of those things just as fast as can be done.

**Mr. Fagg.** Mr. Examiner, does the witness answer that question as it relates to in whole or in part as to this consolidation? That was the question.

**Mr. COCHRAN.** The question was whether this consolidation is ready as far as practical and within the legal time limits to proceed with the consolidation, either in whole or in part of all these companies, and your answer—

**The WITNESS.** Yes

**Mr. COCHRAN.** —to that question is "yes"?

**The WITNESS.** Yes.

**35 Exam. BAKER.** I believe what Mr. Fagg had in mind was whether it is contemplated that it will be in whole or it will be in part.

**Mr. COCHRAN.** All right.

By Mr. COCHRAN:

Q. I will ask you this further question, Mr. Horton: Is it contemplated that all of the assets of all of these companies will, in the near future, if the application is approved, be transferred to Associated Transport, Inc., thereby bringing about a complete consolidation and unification?

A. It is.

Q. Mr. Horton, are you familiar with this map on the board over here?

A. Yes, sir.

Q. Was it made under your supervision?

A. Yes, sir.

Q. What does it disclose?

A. That discloses, in general, the routes and territories served by these companies in this application—the eight carriers.

Q. Will you describe generally the territorial scope of these operations?

A. It covers Massachusetts, Connecticut, and Rhode Island quite thoroughly in New England; New York State, Pennsylvania, New Jersey, Delaware, District of Columbia, Virginia, a corner of West Virginia, North and South Carolina, Georgia, an extension of one operation into Tennessee, and another into Alabama, northern Florida, Mississippi, and Louisiana. The main operation, however, is in New England, New York State, and the States bordering the Atlantic Seaboard north of Florida. It is all common carrier service, and it is a good combination of short haul, intermediate length haul, and long haul operations.

Mr. WOODS. Mr. Examiner, may I hand you this letter from the Secretary of the Commission permitting me to participate in this proceeding as special representative of Super Service?

Exam. BAKER. Thank you, Mr. Woods. You will be permitted to participate in the proceeding.

Mr. WOODS. Thank you.

The WITNESS. Mr. Examiner, I have some notes before me of points that I wish not to forget.

Mr. COCHRAN. Just a minute.

By Mr. COCHRAN:

Q. Will you state the names of the present officers of Associated Transport, Inc.?

A. The present officers are Mr. B. M. C. Moore, president; Mr. Everett Arbour, vice-president; Mr. John McCarthy, secretary, and Miss Dorothy D. Ryan, assistant secretary. That is all. Are there any more?

Q. And Mr. Seymour?

A. And Mr. Seymour is also treasurer.

37. Q. What is your position?

A. Chairman of the board, sir.

Q. Are there any salaries paid to any of these officials?

A. Only to Mr. Seymour.

Q. What is his salary?

A. His salary is \$36,000 a year.

Q. Mr. Horton, are you familiar—

A. In that connection, I want to say something that I forgot to say a while ago, and it is one of the most important points, why I went to Seymour and tried most strenuously to sell him on this type of deal, was the fact that if it were put together I knew it would be a tremendous task, and Mr. Seymour's wide business experience would be of great value in helping to do this job. We all recognized his ability; I think every one of the heads of these companies does, and are very glad to have Mr. Seymour. Without him I would be reluctant to attempt the job, because I have had no such experience myself.

Q. You are familiar with the application, Docket No. MC-F-1612 and Docket No. MC-F-1613?

A. Yes, sir.

Q. And you are familiar with the terms and conditions of the contract set forth in this application?

A. Yes, sir.

38. Q. Just let me finish the question, please. And the contract between Horton Motor Lines and Conger Realty Company.

A. Yes, sir.

Q. Are those contracts, the main contracts, similar to all other contracts that were executed by the other companies?

A. Yes, sir; with minor exceptions, which are shown in the exhibit.

Q. I was coming to that. I am talking about the main contract.

A. Yes.

Q. Are the differences with respect to the exhibits attached to this application all explained in this contract?

A. Yes, sir.

Q. Are there any outstanding employment contracts on behalf of all of the companies whose names appear in this application?

A. Yes; three.

Q. Name the three.

A. Mr. Ackerman, Mr. Whitehead, and Mr. Buckley, of Arrow Carrier Corporation. Those are the three men who were with the Arrow Carrier Corporation, but in the sale that was made last year to the Transport Company, the sale was complete, and they would have no financial interest in and receive no stock by ex-

change of stock in the Associated Transport Company; so we were much concerned in having those men to continue to serve in the capacities that they have served so well in the past, and after they had accepted a reduction in salary, we gave those men management contracts.

Q. The exhibit states the amount of the salary?

A. The exhibit states the amount of the salary.

Q. And it is your opinion that these men, if continued as employees of the Associated Transport or Arrow Carrier Corporation, upon approval of this application, in whatever form the operations may be in the future, would render valuable services and be more or less necessary for the operation of the company?

A. They will render valuable services, and it is quite important to this operation that they be continued in their present positions.

Q. Is there any tentative agreement with them in connection with McCarthy?

A. There is no management contract in effect now, but I will insist that a contract be given Mr. Bertuchio. Mr. Bertuchio occupies a rather unique position in New England in his very close contact with a large number of shippers and customers, important in this transaction, and I think it would be a serious mistake if Mr. Bertuchio were not given a contract which would keep him tied to this company for a term of years to do the same job that he has done up there for McCarthy.

Q. Mr. Horton, I believe you have—

Exam. BAKER. Just a moment. May I clarify that. Is that Mr. George Bertuchio?

The WITNESS. Yes, sir.

By Mr. COCHRAN:

Q. I believe, Mr. Horton, that you yourself have a contract with someone in Richmond on an annual retainer basis.

A. We have a public relations counsel in Richmond, and have had for a number of years, subject to cancellation on one year's notice. We do not propose to cancel that contract.

Q. How much is it worth?

A. It is just the employment of legal counsel.

Q. Are there any other contracts, express or implied, which could be called "management" contracts, or any other sort of contract?

A. Nothing that could be called "management."

Q. I will rephrase the question: Are there any other contracts, either express or implied, existing between Associated Transport and any other corporation or any person, to your knowledge?

A. No, sir.

Q. Are there any writings, agreements, or references to sales of stock, if or when any stocks should be offered the public?

A. None.

Q. You may at this point. Mr. Horton, if you will, explain why Mr. Seymour is a large subscriber to and a holder of stock of the Associated Transport Company.

41 A. In those many meetings that we had in Mr. Seymour's office in New York, covering practically all periods since the first of the year, we have found that there was considerable expense involved, most of which Mr. Seymour was bearing out of his pocket at the time. He was too good a host for his own good. So we decided that the proper thing to do was to create a fund out of which such expenses might be paid and expenses incident to this hearing, and after conferences we agreed that we would buy limited numbers of \$1 par common stock and pay the money into the treasury, and if nothing ever came out of this deal we would have prorata been stuck with expenses, in an attempt to provide that particular source of money and at the same time to tie Mr. Seymour into this deal; so that if and when it should be approved, he would continue to serve as president of the company, and through having an interest in the affairs, serve more people than one might in having no financial interest in it, we rather insisted that Mr. Seymour buy some of the same \$1 stock. Mr. Seymour did that. If the deal is put together, all right. If it is not, he loses, along with us.

Q. There is an understanding, or, rather, a signed agreement by the representatives of the stockholders with reference to the withdrawal of a certain amount of money during the year 1941. Will you explain that?

42 A. It has been the policy of these companies, some very important companies, that near the end of the year to make certain donations or payments of bonuses, and sections of this contract provided for the withdrawal of any moneys other than for ordinary business purposes, or the payment of any dividends, to become necessary and advisable, to make some provision, so that nearing the end of this year, if a decision, either favorable or unfavorable, had not been rendered by the Commission, these companies could continue the policies that had been found standing in their businesses for many years, and by this withdrawal agreement it is possible to do that thing. It produces that result.

Q. Mr. Horton, is this a photostatic copy of the agreement to which you refer?

A. Yes, sir.

Exam. BAKER: Mr. Cochran, do you have copies of that available for counsel?

Mr. COCHRAN: I have.

**Exam. BAKER:** Do you desire this to be marked for identification?

**Mr. COCHRAN:** Yes; I would like this marked as "Applicant's Exhibit No. 1."

**Exam. BAKER:** The document entitled "Memorandum of Agreement between Associated Transport, Inc., and the other parties undersigned, hereinafter called the 'Designees,'" will be marked for identification as "Application's Exhibit No. 1."

43 (Exhibit No. 1, witness HORTON, marked for identification.)

**Mr. COCHRAN.** There are copies here of that document for any who want them.

**By Mr. COCHRAN:**

**Q. Mr. Horton,** the application, MC-F-1613, filed as part of the record in this case, asks for permission or approval to sell 15,000 shares of preferred stock to the public for the purpose of producing working capital. Will you please explain the reasons why that is essential, if it is essential.

**Mr. SULLIVAN.** Excuse me.

**Mr. COCHRAN.** Yes.

**Mr. Examiner,** I want to go back to this exhibit for one moment.

**By Mr. COCHRAN:**

**Q. Mr. Horton,** you will notice that ~~Associated Transport, Inc., does not appear as the party to this withdrawal agreement, which is now Exhibit No. 1, for identification. Do you know of your own knowledge that Associated Transport, Inc., executed simultaneously with the execution of the main contract by the company an agreement similar to this?~~

**A. Yes, they did.**

**Exam. BAKER.** It is identical, Mr. Horton?

**By Mr. COCHRAN:**

**Q. Mr. Horton,** is it identical?

**A. It is identical.**

44 **Q. Now,** will you please state what your reasons are, or the applicant's reason, if you know, for the sale of 15,000 shares of preferred stock of the company.

**A. As I stated a while ago,** these companies find a great need for an increased amount of equipment with which to carry on the transportation service now being required by their customers and it is extremely dangerous to buy that equipment on extended payment terms or to buy it with money borrowed from banks, because, in each case, you have an obligation with a fixed due date, which must be met.

The amount of equipment owned by these companies is substantial—several million dollars, and if even a part of the equipment necessary to take care of the increased volume of business that we are now experiencing were to be bought for cash, it would require a large share of this one and a half million dollars for that purpose. The remaining amount not used for the purpose could well be put in working capital, because all of these companies, just as my company, are now finding increased costs of operation, or are requiring larger working funds; so that we actually find ourselves in the position of being cramped for ready cash.

It is much to the interest of this operation to have more funds available for working capital and to be able to buy equipment for cash, or very largely for cash, with a small amount of extended payment terms. It is my belief that bank credit, as  
45 such, should be held for contingencies in business, and should not be used for the purchase of equipment, because our business is such that moneys invested in motive equipment on the highway cannot be liquidated quickly. It takes several years in which to liquidate that value. For that reason it is unsound to borrow money from a bank on any reasonably short-term paper to buy equipment with it, because it cannot be liquidated.

It is also unsound and dangerous to buy any considerable amount of equipment on extended payment terms carried through finance companies, because, in my experience, payment terms can be a tremendous burden when business starts down and revenue decreases sharply. These two situations usually produce a lack of profits that makes any fixed payment obligation extremely embarrassing.

I think that a million and a half dollars in these combined companies would put them in a much stronger financial position and in a position to perform a much better service for the public without being a burden on the operation. The dividend requirement on that preferred stock probably would be \$90,000 a year, and that would certainly not be a burden on the combined profits of these 12 companies.

Exam. BAKER. I suggest, before we proceed any further, that we take a 10-minute recess.

46 (There was a short recess taken.)

Exam. BAKER. Come to order, gentlemen. You may proceed, Mr. Cochran.

By Mr. COCHRAN:

Q. Mr. Horton, had you completed your answer to the question that was asked you just before the recess?

A. No, sir; not fully.

Q. Go ahead.

A. I want to say this—what I did say might be misunderstood, and I want to make it clear—that when I cited the possibility of \$90,000 dividend on an issue of \$1,500,000 of preferred stock would not be a burden on these 12 companies or their earnings, I intended to say further in that connection that it will not be a burden because the economies that can be produced from the use of that \$1,500,000 mortgage would not be greater than any dividend requirements which these companies would have to meet in the dangerous condition of having a fixed-date obligation. I found that, in my past experience, an extremely important point in dividend requirements, to have dividends in times of great stress be deferred and paid later in times of better business and better earnings. That situation is not true with fixed-term obligations, and it is entirely likely that these companies—as a matter of fact I happen to know that it is true that some of these companies are paying a fairly high interest rate on some of the moneys they are  
47 using in their business at the present time for the purchase of equipment, moneys borrowed at the bank. A great savings can be effected by eliminating those points. I want to say one thing further, and that has to do with the territory, the overlapping and the integrating of these companies.

The Arrow Company is the only company in the country that has the type of coverage and the kind of service that we wish to have. It has built up a connecting link between New York State and the South. There is no other company that I know of that has the history of earnings and good will of the shipping public in that territory, and because that company is so important in this deal I felt, and my opinion was concurred in completely, that Mr. Ackerman and Mr. Whitehead and Mr. Buckley were tremendously important.

I also failed to mention the fact that their employment contracts were with the Transport Company, and the Transport Company had effected reductions in their salaries; in the case of Mr. Ackerman, from \$36,000 to \$25,000 a year; in the case of Mr. Whitehead, from \$18,000 to \$12,000; in the case of Mr. Buckley, from \$12,000 to \$9,000 a year.

We were greatly interested in having those contracts become a part of the deal and to have them come with us because, otherwise, those men, having no financial interest in the Associated  
48 Transport, would be free to continue a competitive operation in that territory. We need them, and we might suffer a loss of business, after that company came in with us, unless we had some method of tying those three gentlemen in with this company. We are very much interested in having those management contracts in the case of every other company, because the Commis-

sion, in the Transport case, indicated that they did not like management contracts, and so we had every management contract in effect by every company canceled out, and there are no other management contracts. We have attempted to put this deal together on a basis that would meet every objection that the Commission indicated in reporting on the Transport application.

We have no promotion stock; we have no group of New York attorneys heading the thing up; and I would like to have it written as a part of the record—I think it would be interesting—as a matter of fact, Mr. Cochran, who is asking me the questions this morning, is not only my close personal friend, but is a member of the board of directors of my company, and in the event of my death would be trustee of my estate and chairman of the board of directors of the Horton Motor Company. The connection of Mr. Mortimer Sullivan with the Moran Transportation Lines, I am quite sure, is equally as close as is the connection of Mr. Joseloff with Mr. Arbour and the Consolidated Motor Lines. We are using

our attorneys, people we have known and worked with for  
49 many years, and in attempting this deal we are leaving out everything that we thought the Commission might want us to leave out.

We must have such territorial coverage as will make a well integrated trucking operation, from a practical viewpoint but—

Q. And it is your opinion, is it not, that if this is granted and you are put on the basis asked for in this application, it will result in an integrated unit for the carrying of freight along the Atlantic Seaboard?

A. Very definitely, and it will result in a tremendously improved service. There is not the slightest doubt about that.

Q. How about the diversification of freight, the commodities to be carried by this system?

A. Well, it produces two things. First, the diversification of service provides a perfect testing ground of the value to the customer of such a company of this kind of service.

As I have previously mentioned, we have very short-haul operations; we have "peddler" runs; we have medium-length operations, such as Consolidated from Boston to New York, or Boston to Philadelphia. We have long-haul operations, such as Horton, from New York to Atlanta. We have end-to-end companies, such as Consolidated, McCarthy, Horton, and Barnwell. We have overlapping companies, but to no great extent. If you will watch the

50 map you will see in New England there are only two companies that would become one. In New York State, a part of Consolidated operation extends out into New York State and duplicates to some extent Moran's. So there is an elimination of one angle to that. There is practically no elimination in the Penn-

sylvania territory served by Arrow, but down in the Carolinas there is a considerable elimination of duplication, that being on the part of Barnwell and ourselves, and down at the very low end, a small end, by Transportation, Inc. There is a considerable area served, such as our operation from Cumberland to Pittsburgh, and Moran's operation down to Cleveland from Buffalo, and Transportation's operation southeast from Atlanta down and ending at New Orleans. There is no elimination of duplicate service at all. Those services will be continued.

Q. When you speak of "our" operations, you mean the Horton Motor Lines' operation?

A. Yes, sir.

Q. On the question of interchange of freight, will there be any change, so far as the consolidation of these companies goes—with reference to the interchange of freight with other companies?

Mr. Fagg. Would you let me have that question?

(Question read.)

A. There will be no lessening of that interchange, except where it is not necessary through the integration of this  
51 service. We now interchange freight with 225 motor carriers. After this deal is put together, we will interchange freight with 221 motor carriers, and four that we are presently interchanging with will be made part of this system.

By Mr. COCHRAN:

Q. When you say that—

A. That brings about an opportunity, I think, to say something important on this deal. It has been the policy of some of these companies to do the very minimum of exchange of freight. I think that that is wholly true with the Arrow Carrier organization. I was told by the head of their business that they only exchanged freight with two people, and yet surrounding their territory is territory to which, through exchange of freight or exchange of equipment without delay, a tremendously advantageous service could be produced.

Our own experience, and the detailed records support it, will indicate an advantage to such carriers as Consolidated and Moran to a much greater degree than they could ever hope to develop by such operation—the advantage of having many connections and diversity of territory, and the great advantage in having the greatest number of points served, to offer to each customer. It is going to be tremendously important, in serving particularly some of the larger shippers, to offer to them the widest possible territorial coverage, because most of them are finding themselves  
52 greatly handicapped in lacking facilities to receive and ship freight at their own plants. We are finding ourselves in many places having to make deliveries to certain customers within

a certain given number of minutes, because they have a list of people that can serve them, and have so many minutes to come in and get out. We will have a wider territory that our trucks can offer to those people through a consolidated service, and a very much finer service, and all of those shippers that I have talked to concerning this deal—and I have talked to hundreds of them—consider this an important point, a very important point.

Mr. COCHRAN:

Q. Mr. Horton, I want to ask you a question with reference to the dollar stock purchased by Mr. Seymour. Is there any agreement, express or implied, as a result of which Mr. Seymour will or may buy or secure additional stock in the Associated Transport, Inc.?

A. None at all.

Q. Mr. Horton, is it contemplated that any such agreement will be made?

A. No.

Q. Mr. Horton, on the question of competition in the transportation of freight along the Atlantic Seaboard, what, in your opinion, will result, if this consolidation is approved, with reference to other carriers operating in the same territory? I have  
53 reference to the extent of competition. Will there remain competition of a sufficient character to enable the shippers in those sections of the territory—

A. Well, there will remain very substantial competition.

Q. To secure other carriers sufficient to handle the freight?

A. There will remain—

Q. You broke into my question before I had it finished, but you understand what I am asking you.

A. Yes.

Q. Pardon me. Go ahead.

A. Pardon me, if I jumped the gun. I recall that there was no question raised in the study of the decision of the Commission in the Transport case. There were 28 operating companies in the proposed deal, and there was no question raised about any territory, excepting an implied doubt as to whether in the South there would remain sufficient competition outside of the deal. In the South at that time there were Brooks, Barnwell, Horton, Rutherford, Southeastern, Super Service, Mundy, and many companies not in this case. In that territory now there are just two, Horton and Barnwell, that were then before the Commission, and in the meanwhile, the Brooks Transportation, a big operation centering in Richmond, have extended their service into the Carolinas; and Mason & Dixon, a very large operation, which previously did not serve the Carolinas, are now in that territory.

As I mentioned, Mundy, Super Service, and some of the  
54 other carriers in that territory that were in the Transport  
deal, are not in this one. I am not saying that the elimination of Barnwell, or my rights, where we have overlapped, would seriously affect the remaining competition. There are scores of those companies, most of which have grown very large. The Harris Motor Lines, at Charlotte, are running two or three times as much equipment as they did a year ago, and the same is true of Akers and many of the others.

Exam. BAKER. Is that the Akers Motor Lines?

The WITNESS. Yes; the Akers Motor Lines.

Now, if you will look at the map, you will notice, as I have previously mentioned, although I did not make a very strong point of that, and that is, that in the case of New England and in that territory there is a tremendous number of carriers, but in Massachusetts, Rhode Island, and Connecticut there are just two carriers in this deal. In the New York territory there are just two, Moran and Consolidated, and down along the Atlantic Seaboard there are Barnwell, Horton, and to some small extent, over on the other side of the mountains, Southeastern. Down in South Carolina and Georgia there will be a slight elimination of duplicate operations in the case of Transportation, Inc. These companies do not overlap sharply. They have been deliberately picked out to produce that result, and to produce end-to-end operations, resulting in a great advantage in the service to the public. They  
55 are additional points that we can offer.

By Mr. COCHRAN:

Q. Mr. Horton, what advantage is there in the transportation of freight by motor that would be brought about by the consolidation of these companies, if any, and will the consolidation of these companies, if it is brought about, be in the public interest, in your opinion?

A. Well, I have made some notes on that point, on those two points, I guess you might call them.

Q. That is right.

A. And there are so many advantages in that operation to the shipping public that I would like to refer to these notes, so I will not overlook some of my important things. One tremendous advantage is going to be the possibility of the increased utilization of equipment, and by that I mean such equipment as line trucks, pick-up trucks, garage and testing equipment, cost accounting equipment, and office equipment.

We know that in some of these operations there are feeder runs. Many of these feeder runs, which, I suppose, are very similar in many respects to such runs on railroads, branch line opera-

tions—are a necessary part of the operation, but in many cases a burden on the operation. These feeder runs, through the fact that a very much wider territory will be covered and offered to the customer, can be made to be self-supporting, and in some  
56 cases put on a profitable basis. The equipment used in those services in such cases would carry more freight per unit, and in that manner would produce a self-sustaining feature.

In each one of these companies, it is necessary to hold out of service certain reserves of equipment, which may be transferred to points of greatest need, and which may be put in service sustaining schedules to replace the equipment going out for repair or out of service by wrecks, or completely worn out. Combining the ownership of all of this equipment, there would be a more flexible use of a large share of this equipment now held out as reserves and not in daily use. That could then be put into use for that transportation service, and while it was providing transportation service it would take care of the increased demand of the shippers and would be earning revenue for the companies. The warehouse situation with these companies has been an important matter. I know that is true in my own case, and after conference with some of these other representatives I know it is largely true in their cases. We have warehouses in small towns or cities simply for the convenience of the customer. Many of these warehouses are a burden.

As an illustration, in Shelby, N. C., Barnwell and ourselves both maintain warehouses. That is a keenly competitive point with us, and either one of those warehouses could do all the business that moves into and out of there by using  
57 combined operations. If we were permitted this consolidation we would require only one warehouse for a job that two are now doing, and we would keep the crew, the minimum crew, that is necessary, as well as the office staff, loaders, checkers and drivers, which presently are a burden on both of us. Since neither warehouse sustains itself in our operations, we would let one warehouse do the complete job and move the other one to Durham, and in doing so we would give very much better service to the shippers in Durham. The same thing would be true exactly in Hickory, N. C. One or the other of us would use the facilities best suited for the use of that territory, moving the other personnel, equipment, warehouse and all, to Ashboro, and again, in that connection, we would produce for ourselves economy of operation and very much better service to the shipping public.

A further illustration of the situation of Barnwell and Horton is in Charlotte. We find ourselves very badly congested in our warehouse there, a warehouse that we built for ourselves, due to the fact that it is in the middle of our operation. We have both

north-bound and south-bound freight moving through the same warehouse and across the same platform at the same time. In times of heavy flow of traffic, this is a tremendous burden, and it creates a great deal of confusion, many hours of delay, and added  
58      lost and damage through the multiple number of times that the shipments must be handled. We undoubtedly could use a Horton warehouse for either a north- or south-bound warehouse, and the Barnwell warehouse, which is just across the corner from us, for freight moving in the opposite direction. We could use the Horton for the north-bound warehouse and Barnwell for the south-bound, and in this manner we could eliminate any confusion caused by freight working opposite across the platforms.

That would not effect costs particularly, so far as anybody employed in that type of operation is concerned. It just expedites the movement of freight; it causes less delay and less loss and damage—points which I am sure are quite interesting to the public. In the use of pick-up trucks—and this point concerning the use of line trucks is going to be increasingly important, as it is getting more difficult to get sufficient equipment to do our job—operating out of the Burlington warehouse, and going back again to my operation, because I am more familiar with it although it is largely true of these other companies, Barnwell and ourselves both have a run to Fayetteville, N. C., a distance of some 100 miles. I do not suppose that my truck down to Fayetteville has ever been fully loaded coming back, and I do not imagine Barnwell's has, except in a few cases. One of us could keep our piece of equipment and let the other truck go into that territory where it is needed.

We are finding points today where we are just not able  
59      to give service through lack of equipment that the customer requires. By this better utilization of equipment, I think we can probably do that. It is going to be necessary that we continue in service trucks for a longer number of months or years than we have in the past. It has been the policy of these companies, all of them, that, at some point in the life of the truck to retire it from service, sell it for junk, or trade it out, dispose of it, and replace it with new equipment. The ability to do that is going to be curtailed greatly, we are told by the Defense Commission; so it is necessary that we maintain for longer periods of time the equipment that we presently have.

Today we have to have an adequate supply of parts and materials, adequate skilled help, such as mechanics and electricians, and adequate repair equipment, such as motor rebuilding equipment and motor testing equipment. All of these companies do not now have such equipment; Some of them do, but, through

the use of centralized service and repair garages, which is only possible through this kind of a deal, such equipment—and it is almost impossible to get it today—could be made available for the trucks of all these companies. If that were done, I am quite sure that those companies not presently able to have such service would find the same experience that I have found, that by the use of finer machines and equipment in repairing motors and in testing them on the blocks and running them before they are put back into service, they will not only be freer from delay, but will be able to keep them running on the smaller consumption of gasoline and oil.

In the matter of inventory of parts, it is daily becoming increasingly difficult to maintain an inventory of parts adequate to do the proper servicing job on our equipment. Each of these carriers has equipment out of service awaiting the arrival of some piece of material or part from some manufacturer. The combined inventories of all of these companies, stationed at two or three centrally located points, would lessen such delay and such waiting periods for parts, because they would have a very much larger and more adequate inventory of parts.

In the use of cost accounting equipment—and, again, that is equipment that it is practically impossible to get; I mean, such equipment as International Business machines—it is possible through the use of that equipment, since the adoption of centralized cost accounting, to gather statistics together relative to cost of operations and analyses of movements of freight by areas and by customers. That is not now practical and impossible with these companies operating independently. There are only three of the eight companies that have complete set-ups of such cost accounting equipment, not only for cost accounting but for traffic analyses and comparative studies of operating costs; but by this combination, this equipment and the trained personnel necessary to keep the equipment in service, can be made available for all the companies.

We have found that through the use of such equipment we have been able to make a detailed study of commodities that move within certain areas, which are of tremendous value to the sales department in helping to develop freight from areas and to areas, from and to which partly loaded trucks are running.

I want to make a point which is a little independent of the point that I am stating now, but I think it is very important, and if I am repeating myself, that is all right.

There is not going to be enough transportation in this country from the middle of October on through many months to come,

and it is going to be absolutely necessary for everybody who is able to perform transportation service to provide the absolute maximum of service within his power to provide. I am not speaking now only of defense, but I am speaking of the movement of merchandise, materials, and commodities, in our normal industrial and commercial life.

We have found ourselves in this position: In the year 1940 our average pick-up or delivery of freight was 457 pounds, or 450-odd pounds. It is now over 100 pounds more than that, and it is absolutely impossible for me or any of my organization to go to those shippers who have been using our service for 62 years; and relying on it, to supply them with the type of transportation services that they expect from us, and say, "We can still take the 450 pounds of freight each day that you gave us last year, but the extra 100 pounds or more you will have to put it in a wheelbarrow, because we have not the trucks to run it."

We have to run the trucks by the transportation service that the shippers require. We have to get every piece of equipment that is out of service for any reason back on the highway, operating as safely as we can provide. We have to use every skilled employee that we have, and we have lost severely in skilled mechanics. One of our major operators lost every mechanic that he had in one of his important garages, either to the military service or to some other defense plant. So that all of the equipment we have for the maintenance of our transportation service, and all of the skilled employees that we have, we must utilize to the fullest possible extent.

As to the increased use of warehouses, these eight companies now have 179 warehouses, of which 97 are in cities and towns not served by any other one of the companies. Thirty-eight of these 179 warehouses are in cities and towns in which there are two warehouses of these companies, 11 cities have three warehouses each; one city has five, and one six, and through the rearrangement of the use of the these warehouses there is not the slightest 63 doubt that substantial economies can be effected on the one hand, and there will be a greatly improved service, on the other.

Mr. TOBIN. Would you mind running down the list of the cities in which these warehouses are located?

The WITNESS. Yes; I have them.

Exam. BAKER. It may be helpful if you would state the cities where the duplications are.

The WITNESS. The city having six terminals of these companies is New York City; the city having five is Philadelphia; the cities

having three are Albany, N. Y., Baltimore, Md., Binghamton, N. Y., Burlington, N. C., Charlotte, N. C., Greensboro, N. C., Hickory, N. C., Newark, N. J., Paterson, N. J., Shelby, N. C., and Winston-Salem, N. C.

Do you want the list of those having just two?

Exam. BAKER. How many are there?

The WITNESS. There are 39.

Exam. BAKER. Yes; will you read those, Mr. Horton.

The WITNESS. All right, sir.

Atlanta, Ga., Boston, Mass., Bridgeport, Conn., Bristol, Va., Tenn., Buffalo, N. Y., Cumberland, Md., Hartford, Conn., Knoxville, Tenn., New Haven, Conn., Pittsfield, Mass., Providence, R. I., Rochester, N. Y., Schenectady, N. Y., Spartanburg, S. C., Springfield, Mass., Syracuse, N. Y., Utica, N. Y., Waterbury, Conn., and Worcester, Mass.

All the others have only one.

64 Mr. COCHRAN. I believe you read only twenty, Mr. Horton.

The WITNESS. I might make an error in this, because it is blurred; it has been worked over so much. How many did I say there were?

Mr. SULLIVAN: You said 39.

The WITNESS. I said 38 of these warehouses, of these 179 warehouses, are in 19 cities and towns.

Mr. Fagg. Mr. Horton, when you use the word "warehouse," do you use that word in the same sense as "terminal"?

The WITNESS. In most cases, the word means the same thing. In some points it means a pick-up station. It may be a service garage or a gasoline filling station. In most cases it means a motor freight terminal, and I suppose that probably the word "terminal" is more easily understood than the word "warehouse." I use "warehouse" because that is most familiar in my own operation, as we really do have warehouses.

Now, the increased utilization of equipment of all sorts, pick-up trucks, line trucks, warehouse facilities, office facilities, garage and testing equipment, produces out of the same number of pieces of equipment more transportation service and produce some economies of operation.

Mr. Cochran, I understand that you asked me a question as to the public interest?

By Mr. COCHRAN:

Q. Yes. Have you finished with the advantages that you have been enumerating?

65 A. I have finished largely the increased utilization of equipment.

Q. Have you referred to the standardization of equipment as being one of the economies that might be brought about?

A. I forgot to mention it. That is quite an important point.

The ultimate standardization of equipment by these companies would mean that they would be able to put equipment of like makes and models in the same areas. For instance, we have today Autocars, Whites and Macks in our operation, and some of that type of equipment is in use by the other carriers. We could put all the White equipment in one area and all of the Mack equipment in another area, and get very much finer service by putting in a central garage all of the inventory of parts or materials necessary to maintain that kind of equipment. Personally, I have to have not only skilled mechanics, but parts and materials to maintain four different kinds of trucks. If I had to have parts and equipment and skilled men to maintain only one kind of truck, it would require less investment in parts and materials and less delay in getting the important parts and materials that are difficult to get, and the skilled personnel that I have could be used to a greater advantage in maintaining such equipment.

So the standardization of equipment which a unified system such as this could produce would be tremendously important, in addition to the standardization of cost accounting equipment

66 which is now being developed by one or two of the companies through the use of their cost accounting set-ups could be established over a reasonable period of time, and it could be determined exactly which equipment is the best and safest and the most economical to operate in any given service. Presently, under the competition existing between these carriers, such information is not exchanged, but undoubtedly cooperative effort of all of the heads of these companies and their organizations will produce additional points at which economies can be expected. In the type of service that might be rendered tremendous advantages can be had.

For instance, we bring equipment into New York in the early morning, loaded with freight for New England destinations. In the operation of our business with the Consolidated Motor Line, with which we exchange this freight during the day, that freight is loaded into Consolidated's equipment, and on their schedule it goes out late in the afternoon or early in the evening for the New England destinations. It will be wholly practical and common sense; in case this deal were approved by the Commission, that such equipment, arriving at New York in the morning, would immediately be taken over by the Consolidated driver and tractor and go on to the New England destination, and in many cases it could

be back in New York, loaded for the south, in time to catch our late schedules out of New York in the evening.

67 Q. You are referring there to the exchange of equipment?

A. To the exchange of equipment; yes, sir. That is not possible today. We are under such a strain to getting equipment that every carrier is very reluctant; as a matter of fact, most of them absolutely refuse to permit their equipment out of their own organization's hands.

I have a great deal of respect for Arbour and his operations, but I would not turn over fifteen to twenty trailers to load with freight for New England today, because I have no way of knowing when I would get those trucks back.

Under that theory, of course, there would be the advantage of being able to provide more transportation service, and it would expedite tremendously the service possible by our organization.

Today we serve into Virginia, the Carolinas, lower Virginia and the Carolinas, with second morning service out of Metropolitan New York area. Under the service possible as I have just outlined it, we would have second morning service from a large number of New England points which is presently third morning service. In a good many cases, we could save 24 hours. That would also be true in the exchanging of freight up in the New York territory.

Q. That would also be true of southern freight, would it not?

A. Oh, yes; all the way through. For instance, Barnwell now exchanges freight with Transportation. It is an extremely troublesome method of handling the freight. We have to have a complete accounting and recording of every piece which is moved in that area. They have to have exactly the same records. There are duplicate records and duplicate offices maintained in keeping those records, and there is a delay involved in it.

In so far as C. O. D. shipments are concerned, they are increasing in importance in the business today. There will be very little doubt, I think, on the part of any shipper as to the financial responsibility of these combined companies, whereas today they may have a doubt as to the financial stability of any one of the individual companies.

I am quite sure that the lack of handling in the direct movement from the point of pick-up to destination, without transfer of freight, would certainly produce less astray shipments and less loss and damage, and, if so, I think those matters are all of keen interest to the shipping public.

I want to again mention the fact that we will be able to provide an increased amount of transportation, and before this year is

out that is going to be tremendously important to most shippers of freight.

Many of the shippers with whom I have talked in connection with this matter have expressed themselves about something that they seem to place greater importance on than I place on it.

69 That is their lack of facilities to handle the great number of trucks coming in from the different companies, but in the great number of shippers that I have talked to, I have yet to find any one that did not like this kind of a set-up when it was explained to him. They would like to have a smaller number of companies to serve their business, and they would like to have less congestion at their platforms. They would like to have fewer number of offices to call for information on their shipments. I got that directly from the shippers themselves. That is something in which they are keenly concerned, and they like very much the idea that through this deal we can provide that service for them.

Q. Will you explain how that can be brought about, Mr. Horton?

A. At this moment there is a Barnwell Truck, a Horton truck, and a Transportation truck backed up at the platform of the North Carolina Finishing Company at Yadkin, N. C.; there is no need for all of those three trucks to be there.

Q. In all probability, not one of the three is full loaded?

A. They are never fully loaded, and those trucks can be used somewhere else to a much greater advantage.

Q. What have you to say as to the question of insurance as applicable to the combined companies, or have you touched on that?

A. I have not, but I should have. My failure to do so was an oversight on my part, because I have a note here to remind me of it.

70 We will make substantial savings in the purchase of insurance, as well as substantial savings in the purchase of gasoline, oil, and tires; there will be less consumption of oils and less consumption of tires because of better handling and better servicing. The savings on those will be substantial!

In the study that I have made on insurance, it indicates, I think, that \$300,000 or more would be saved immediately. Those savings can be made almost as quickly as it is practical for the policies to be written, and, if it is done, there will be a more adequate coverage of the kinds of insurance that we all carry than is now covered for the benefit of one of the individual companies.

Q. Have you covered in this respect the question of repairs of testing machines?

A. Yes; I have covered that.

Q. You have covered that?

A. And I can illustrate. I think I said twice something about the use of less gasoline and oil. I would like to give an exact illustration of that.

When we obtained two or three years ago some very fine, the finest available, rebuilding equipment and some expert men to use that equipment, equipment for the testing of our motors, we conducted a great many experiments with the Ethyl grease of the Standard Oil Company of New Jersey and the various other oil producers, and we have found that by the use of highly

71 skilled mechanics and this equipment—and I must say again it is practically impossible to get it today—but by the use of that we have cut the consumption of gasoline to a very considerable extent. We ran on one head tractor unit less than four miles a gallon—about  $3\frac{3}{4}$  miles a gallon to nearly 5 miles per gallon, and that is a tremendous decrease in the consumption of gasoline.

We also found that we could decrease our delays on the highways because we had fewer breakdowns on the highways; we had less interruptions of service by having the equipment more perfectly serviced in central garages.

These economies I know can be effected; I know that from experience, because, when we took over the Maner Motor Express, when we took over Bull, when we took over White at Baltimore, by centralizing our garages and putting in better equipment and more highly trained personnel, we have decreased very sharply our costs. When we took over White, that made it possible to have a large garage in Baltimore. We have no use for it there but we still have it there. That will be available for Barnwell and Southeastern, both, going through Baltimore, and neither of which has sufficient facilities or services in the Baltimore area.

Q. Are there any other points that you wish to mention that might tend to show that the consolidation of these companies would be in the public interest?

72 A. Well, sir, I know there are; but for the moment I cannot think of them.

Q. How about the financial strength of the company, Mr. Horton?

A. The company will be financially very sound and very strong. We have done everything, I think, to produce that result.

In the beginning, when we studied the financial statements of these eight companies, we wrote out every asset of intangible value, and in these companies now there is no recognition at all given to anything except tangible values; that is, the things you can put your hand on, and we are only issuing preferred stock up to 80 percent of the net worth of each company. In my own case, I

turned in a certain amount of net worth, tangible value, nothing intangible, and I got 80 percent of that amount of preferred stock.

As I said, these companies have got a considerable historical background, and they can be studied for years, particularly for the six years that we have been under the control of the Interstate Commerce Commission. Their reports and accounting statements are exactly in the same form, and we can make up perfect comparisons, one with the other, in all kinds of operations; so that this situation, plus the economies that can be effected by this consolidation, and plus the increased value of the service to the public, would undoubtedly produce a greater volume of business.

73 Q. You refer to 80 percent of the net tangible worth. Was that arrived at by appraisals or reports at all?

A. No appraisals or reports. These are reports filed with the Interstate Commerce Commission.

Q. Have you anything to say with reference to the relations with public regulatory bodies? Would there be any advantage in that respect by the consolidation of these companies?

A. Undoubtedly. They will be easier to control in so far as some of the regulatory bodies are concerned.

Q. If the eight companies are under one operation?

A. Yes; that is right; one operation is easier to control than eight operations.

Mr. COCHRAN. Mr. Examiner, it is about lunch time, is it not?

Exam. BAKER. Yes; do you wish to suspend at this time?

Mr. COCHRAN. We may as well, and after recess we may have a few more questions of this witness.

Exam. BAKER. If it is a convenient time for everybody, we will recess now for lunch.

Mr. COCHRAN. That would suit us very well.

Exam. BAKER. We will recess until 2 o'clock.

(Whereupon, at 12:30 o'clock p. m., a recess was taken until 2 o'clock p. m. of the same day.)

### Additional Appearances

J. B. Dempsey, First National Bank Building, Kingsport, Tenn., appearing for The Mason and Dixon Lines, Incorporated, Kingsport, Tenn., Akers Motor Lines, Gastonia, N. C., Atlanta-Union Point Trucking Company, Inc., Greensboro, Ga., Benton Rapid Express, Savannah, Ga., Blue Ridge Trucking Company, Asheville, N. C., Cedartown-Atlanta Freight Line, Cedartown, Ga., Cumberland Freight Lines, Inc., Nashville, Tenn., Dixie Freight Lines, Atlanta, Ga., J. D. Jordan Truck Line, Centre, Ala., Lewis &

Holmes Motor Freight Corporation, High Point, N. C., Mathews Freight Line, Inc., Thomaston, Ga., New South Express Lines, Inc., Columbia, S. C., R.-C. Motor Lines, Inc., Jacksonville, Fla., Smith Transfer Corporation, Lenoir, N. C., Southern Motor Express, Birmingham, Ala., Wilson Truck Company, Nashville, Tenn., A. A. A. Highway Express, Inc., Atlanta, Ga., Great Southern Trucking Company, Jacksonville, Fla., Booze Truck Line, Roanoke, Va., Colonial Motor Freight Line, High Point, N. C.

Joseph W. Connolly, 1 Franklin Street, Alexandria, Va., appearing for Ford Motor Company.

Exam. BAKER. Let us resume.

Before we resume examination of the witness, I would like to get an estimate from applicant's counsel, if possible, as to the time it will take to present applicant's case.

Mr. COCHRAN. Mr. Examiner, all I can say is this: For instance, on this witness we are going to be but 30 minutes over time on my estimate, and the best we could—it all depends on the cross-examination, of course, but we hope to be able to finish—practically finish this week, if it is possible, by Friday or Saturday, if it is possible, with our last witness, who will be the auditor. We may have to go over into Monday. Now, that is the best estimate.

Exam. BAKER. Can the intervenors state, any of them, as to whether they intend to put on any witnesses or any evidence in their behalf?

Mr. Tobin, were you going to present any evidence?

Mr. TOBIN. Yes, we expect to have a witness.

Exam. BAKER. About how long will it take?

Mr. TOBIN. Well, last time it took most of the day, if I remember correctly.

Exam. BAKER. I beg your pardon?

Mr. TOBIN. Last time it took most of the day, if I remember correctly. It won't take too long, though.

Exam. BAKER. Well, you did not have—

Mr. TOBIN. There was a lot of cross-examination, so far as he was concerned, at the last hearing. We had—Mr. O'Brien, I think, was on the stand.

Exam. BAKER. Are there any other intervenors proposing to introduce any witnesses, Mr. Wiprud?

Mr. WIPRUD. It may be, Mr. Examiner, we will have one witness. It all depends on the course of the hearing. We will be able to tell a little later.

Mr. WOODS. The same statement as made by the other gentleman applies to Super Service. We can't tell until the hearing has progressed a little further, but I don't think we will put on any witnesses, perhaps one.

**Exam. BAKER.** Mr. Cochran, if we had two or three night sessions do you feel that we could finish this week with the entire case?

**Mr. COCHRAN.** I want to be perfectly frank with you. We have an auditor working and a group of auditors working, and they have been working both day and night for some weeks, several weeks, and there are certain adjustments in that work that have not yet been completed. We are having a meeting tonight with that auditor and we will know tonight how long it will take him to get that—the final touches put to his work. If I knew that, I could answer your question, and without it we might have to ask for a delay if we run it too fast.

**Exam. BAKER.** Will you be in a position tomorrow to indicate whether or not—

77 **Mr. COCHRAN.** I certainly will, and I will be glad to do so. I will make it a point to talk it over with my associates and arrive at a possible estimate of the time. Naturally, we want to curtail it as much as possible.

**Exam. BAKER.** I will be glad to do it.

**Mr. FAGG.** Mr. Examiner, so far as we are concerned, we will have no witnesses as we see it now. We think there are a few things to clear up, and if there is cross to clear up a few things, it will satisfy us.

**Exam. BAKER.** Very well.

Are there any other additional appearances at this time?

**Mr. DEMPSEY.** Your Honor, at this time I would like to put in my appearance. J. B. Dempsey of the Mason and Dixon Lines, Kingsport, Tenn., representing the list of carriers, in addition to the Mason and Dixon, that Mr. John M. Miller read into the record this morning, and if it pleases Your Honor, in addition to that list, the Inter-City Trucking Company of Memphis, Tenn.

**Exam. BAKER.** You are a registered practitioner, Mr. Dempsey?

**Mr. DEMPSEY.** I am, sir. If I am permitted to intervene, it will not broaden the scope of the hearing. We are not—don't propose to object to the applicant's application nor sponsor it; only to the extent of protecting the interest of these carriers, wherever it may be.

**Exam. BAKER.** Very well.

78 **Mr. CONNOLLY.** Joseph W. Connolly, Ford Motor Company, Alexandria, Va. I am a registered practitioner and for the time being my interest is that of an observer subject to subsequent change.

**Exam. BAKER.** Very well. You may resume. All right, Mr. Cochran.

H. D. HORTON resumed the stand and testified further, as follows:

Direct examination (continued) by Mr. COCHRAN:

Q. Mr. Horton, before we adjourned for lunch you were discussing the question of issuance of a certain amount of preferred stock and the basis upon which it was to be issued in exchange for stock. Will you explain that again? I don't remember.

A. I was attempting to state my opinion and the reasons for that opinion that this preferred stock was thoroughly sound was due to the fact that all intangible items in statements were removed, leaving nothing but tangible value items in net worth statements and that these statements were prepared from books. All of these carriers' operation of necessity being under control of the Interstate Commerce Commission, their records are kept according to the rules and regulations of Interstate Commerce Commission, and the stock will be issued on statements from systems of accounting laid down by the Interstate Commerce

79. Commission. There will be minor adjustments of necessity to be made because of that you just mentioned to Mr. Examiner just now having to do with minor variations in some classes of accounts that are not in complete detail covered by rules and regulations of the Commission. To whatever extent those minor changes might affect the net operating statement of the combined companies, to that very small extent this issue of stock might exceed by a fraction of a percent, above or below, 80 percent of net tangible value, but it would of necessity have to be a small amount.

Q. Under the terms of the contract, isn't it a fact that each stockholder will secure in exchange for stock preferred stock based upon 80 percent of the net tangible assets, subject to adjustments—

A. Right.

Q. Of the company that is being sold?

A. Right.

Q. And together and in addition to that we will secure a certain number of common shares of stock of the par value of \$1 each; is that correct?

A. That is correct.

Q. Can you say whether or not the number of shares of common stock to be issued under the terms of this contract will exceed the net tangible value of the companies or will be less?

A. It will be less by several hundred thousand dollars.

80 Q. Mr. Horton, there appears in the record an item showing that Transport, Inc., owns quite a number of shares of stock in Associated Transport, Inc., the applicant in this hearing. Will you explain the circumstances under which those shares were transferred to Associated Transfer—Associated Transport, Inc.?

A. The Transport Company in their application to the Commission for a proposed merger of last year had made certain audits of all of the companies in that proposed merger. Since eight of these companies were in that 28 companies of last year, those audits have already been made. I don't know what it would cost to have the audits for 1939 and '40 and those things made for all of these companies again. I don't know; it would be likely a considerable amount of money and take considerable length of time, and since we didn't wish to incur the expense—didn't think it was advisable and necessary to incur that expense in having audits made all over again for these years which are required by the Commission in this hearing, we decided to buy those audits, and we bought them from Transport Company. We gave them \$1 par common stock because we did not have much money. It might have cost a considerable amount of money to have bought those records. We did make a deal with them for 9,000 shares of \$1 par common stock which gave us all of the audits, and so forth, that were made in these companies.

81 Q. Do you know of any other records that were needed other than the audits?

A. As I recall it, it covered all of the records.

Q. All of the records?

A. All of the records.

Q. All of the records that were applicable to these seven companies?

A. Eight companies.

Q. Eight companies, were purchased from Transport, Inc.?

A. That is right.

Q. It included transcript of the testimony in the other case as well as other audits and other records and papers?

A. That is right; the most important of that, however, being the audits because they would have to be reproduced. If we couldn't buy them we would have to go out and get them.

Q. Do you wish to explain how you arrived at 9,000 shares?

A. Well, that barter and trade proposition extended over quite some time, and it was really a barter and trade proposition; estimate on our part of how much we thought we could get the audits made for and estimates on the part of the Transport Company.

Q. In other words, it was a barter and trade?

A. It was a barter and trade proposition.

Mr. COCHRAN. Mr. Examiner, that is the only question we would like to ask Mr. Horton at this time. We would like to recall

82 Mr. Horton whenever the question of Horton Motor Lines, Inc., the details of that company are to be considered. He is submitted to cross-examination.

Exam. BAKER. Cross-examination.

Mr. Fagg. Have you got any questions, Mr. Examiner?

Exam. BAKER. I will reserve my questions until after cross-examination.

Cross-examination by Mr. Fagg:

Q. Mr. Horton, I have before me Docket No. BMC in F-1613, and on the first page thereof it says "60,000 shares of preferred stock." What dividends will that pay, or does the record show that?

A: Where is it, sir?

Q. "Sixty thousand shares of preferred stock, present par value of \$100." What dividend—

A. First page.

Q. Will that pay, if any?

A. It is proposed—

Mr. COCHRAN. You will find that on page 5, the bottom of the page, the answer to that, subsection (d).

Mr. Fagg. Six percent; is that right?

Mr. COCHRAN. Correct.

By Mr. Fagg:

Q. In answer to counsel's question, you spoke about issuing stock to the extent of 80 percent. Eighty percent of what? Was that clear on the record as to what that 80 percent represented, 83 or is there to be additional stock held in the treasury of the consolidated company?

A. I tried to make it clear, sir, that that 80 percent was to be 80 percent of the net tangible worth of each company. As an illustration, if I turned in a company the net value of which was a million dollars, I would receive for that \$800,000 of this 6 percent preferred stock.

Q. And there would be no other stock issues of any kind?

A. No; there would be a common stock issue, but the total issue—in answer to counsel's question, I stated that the total issue of all kinds of stock at par value would be less than the net tangible worth of the companies.

Q. And there would be no treasury stock remaining in the treasury unissued; is that right?

Mr. SULLIVAN. Excuse me, sir.

Mr. COCHRAN. I doubt if he can answer that question. It is contemplated, before the hearing is ended, to have the exact number of shares for which we are asking for approval. It is an exchange and sale, and there will be no treasury stock unless there are shares of treasury stock, for the purpose of taking care of the conversion privileges as set forth in the preferred stock.

Mr. FAGG. And that will be portrayed to the Commission in exhibit form?

Mr. COCHRAN. That is right.

Mr. SULLIVAN. Excuse me. May I have the record show  
84 that we are not talking about treasury stock? We are talking about authorized but unissued stock. I believe that is correct; isn't it, Mr. Fagg?

Mr. FAGG. That is right, but I understand from counsel that that will all be portrayed in an exhibit to be filed with the Commission.

Mr. SULLIVAN. That is right.

By Mr. FAGG:

Q. You spoke about saving \$300,000 pertaining to insurance premiums. Is that per year?

A. Yes, sir.

Q. If the Commission approved this consolidation you would have that saving?

A. Yes.

Q. Thinking of the shippers' and public interests in this proceeding, what have you to say with respect to the load factor as to whether it would be improved or not if the Commission authorized this consolidation?

A. We expect that it will be improved.

Q. You referred to the interchange with approximately 200 other carriers, that is, carriers that are not a party to this petition wherein you would continue through rates and routes with said carriers. Does that mean that you will not add to those joint rates and through routes by expanding if consolidation is granted?

A. I don't understand your question, Mr. Fagg. Are  
85 you intending to ask me that as a result of the consolidation we would establish a policy where we would not make any more interchange connections?

Q. That is correct. In other words—

A. We do not contemplate—

Q. The question is as to whether through this consolidation the Commission is to understand and the public is to understand that you are not to expand your through routes and joint rates?

A. No. No; what I said this morning was that we personally have connection with 225 connecting carriers. As a result of this consolidation, four of those who contemplated to be in this would not have to have an exchange agreement. We would have 221, but if there is any requirement on our part or the shipping public that that 221 be increased, and it is feasible and right and proper

that that be done, it will be increased just as we have always done.

Q. That is the answer to my question. As I understand it, Mr. Horton, you are testifying on the basis of the information supplied here to the Commission in F-1612 as well as F-1613; is that right?

A. Yes, sir.

Q. Can you state for the record, will the total capitalization in dollars of the consolidated operation, if approved by the Commission, will that total capitalization be more or less  
86 than the present individual companies?

A. If both applications are approved by the Commission the capitalization would be one and a half million dollars more than it presently is. No; it would not, for this reason: We are presently putting together companies whose net tangible worth is a fraction over \$5,000,000. We propose to issue against that slightly in excess of \$4,000,000 of preferred stock and something in the neighborhood of 700,000 shares of \$1 common stock. That total capitalization then would be in the neighborhood of \$4,700,000 at par against something over \$5,000,000 of assets. If we are permitted to issue and sell a million and a half dollars of preferred stock, both your capital account and your cash account increase in the same amount, so you would then have a matter of a fraction over six and a half million dollars of capital structure; but we do not contemplate any time the issue of stock in excess or even equal to the net tangible worth of the companies.

Q. Then, as far as the shipper and the public are concerned in this investigation, they are not confronted with inflated or increased capitalization in connection with their transportation service and charges; are they?

A: We have very carefully gone through every statement, every one of these carriers, too, his own statement and everybody else's, and have taken out every such value. There are no franchise values; there are no good will values; there are no  
87 organization values. All of those things have been taken out.

Q. Mr. Horton, I think it would be interesting if you could tell the Commission and—where you refer to the shippers that you conferred with to determine the public interest and shippers' interest in this proceeding, approximately how many shippers did you talk to that said to you that they thought this would be a good thing for the public and shipper?

A. Why, having no reason to contemplate any such question as you ask, I haven't made any such analysis. I will say that over a long period I have talked to many, many shippers, and I don't know of anyone who has opposed the idea. I can say it that way.

Q. About how many did you talk to, a hundred, five hundred?

A. Not five hundred, no. Forty or fifty.

Q. From a public interest and shippers' standpoint, would you sum up your testimony of those interests in this proceeding, if the Commission so granted it, that it would result in lower costs and improved service to the shipper and the public?

A. It will undoubtedly improve the service to the public and should result in economies of operation which, of course, reduce cost.

Q. The result of your study that you made for a number of months indicates a reduction in costs; doesn't it?

A. Yes.

Q. In your opening testimony, you referred to a 35 percent increase, and I did not know whether you meant that was a 35 percent increase in dollars or tons that you were confronted with at present, compared with a year ago.

A. Talking about dollars.

Q. Dollars.

A. Dollars of business.

Q. You also referred to service contracts of three officials of Arrow Carrier. Did you specify or does the record show that you have already submitted in this case the duration of those service contracts?

A. They were made either at or just before the sale—this is my impression—and I may have to be corrected in it, but I am under the impression at the moment that these contracts were made at or just prior to the sale by these men of their interest, which is the stock of Arrow Carrier, to the Transport Company, and I think that took place some time last year, and my impression is that the contracts have five years to run. Certainly we want those contracts to run sufficient long length of time that these men without a contract, if they didn't have a contract, couldn't go out and enter competitive business against us, because they are the only ones who know anything about that operation in Pennsylvania.

Mr. COCHRAN. May I, just for your information and as a part of the record, state that Exhibit F of the Arrow Carrier Corporation winds up with this statement: "Employments and contracts effective when, as, and if the Transport Company takes title and for five years thereafter."

Mr. FAGG. Very well.

Mr. COCHRAN. And that names Ackerman, Buckley, Whitehead, and Mr. Hamilton, whose contract does not extend over into the operation of this company.

By Mr. Fagg:

Q. Is there any term of service contract in connection with the one party, with the McCarthy Equipment Company?

A. There is not, but there is likely to be.

Q. Well, what is the duration—

A. My preference in the matter, were it left to my discretion, would be to give Mr. Butchio not less than a five-year contract.

Q. That has not been agreed to by your board?

A. No. As to exact length of time, Mr. Fagg, no. It has been talked that it would be most advisable for the company if we get Mr. Butchio on a contract. That is well understood by all of the board.

Q. Mr. Horton, in MC-F-1223, there was filed an exhibit showing depreciation charges of the various factors entering into operation of the carriers party to that proceeding. Is it proposed by you, or others, to file a similar depreciation account?

A. What—Mr. Fagg, what is that MC-F-1223?

90 Mr. SULLIVAN. That was the Transport Company.

By Mr. Fagg:

Q. Transport.

A. Transport. I could not identify it by the number. We do have depreciation charges as a part of this exhibit, part of this application.

Mr. COCHRAN. It is already—

Mr. Fagg. It is in the record.

Mr. COCHRAN. Yes, sir.

The Witness. It is in the record. It is part of this back page clause. No; it isn't. That is it.

Mr. COCHRAN. Exhibit B-3, Mr. Fagg.

Mr. Fagg. Exhibit B-3?

Mr. COCHRAN. That is correct.

Mr. SULLIVAN. It shows the contract depreciation rates, Mr. Fagg.

Mr. Fagg. For all parties to this petition?

Mr. SULLIVAN. That is right.

By Mr. Fagg:

Q. Mr. Horton, this morning you spoke with respect to the competition, etc., of carriers and called attention of the Examiner to a map on the wall. Is that the same map as appears in F-1612 headed Exhibit BMC-45 C-5?

A. It is, sir; except that the larger map is made in colors to make it more easily noticeable the scope of each company's operation. The routes are the same.

Q. Again having in mind the public interest and shippers' interest in this proceeding, which are the same, do you propose to show what is the competitive feature remaining between other carriers that traverse the same territory that is shown on Exhibit BMC-45 after the consolidation be granted by the Commission?

A. Such evidence will be presented by another witness. It will be presented.

Mr. SULLIVAN. There will be two exhibits, too, Mr. Fagg, if that is what you are driving at.

The WITNESS. There will be.

Mr. COCHRAN. There will be three exhibits.

The WITNESS. But I will not be the one to present it. It will be someone else more familiar than I am.

Mr. FAGG. Mr. Counsel, may I ask you on that score, you will portray in this record the degree of competition that will remain if this consolidation is granted?

Mr. COCHRAN. That is right. You are asking me to make the statement, but we will do the best we can. We have one exhibit showing certain operation of the southern carriers and another showing the eastern and another showing another, and those exhibits will be introduced, and the persons who know the facts and circumstances surrounding the exhibits will be here to testify about that.

Mr. FAGG. Thank you. That is all. Thank you.

By Mr. TOBIN:

Q. Mr. Horton, will you be able to supply the record with a breakdown of your employees at the various branches of your operation?

A. I can in my operation, Mr. Tobin. Not contemplating that question, I didn't develop that. Every other company can do the same thing.

Q. And that will include the various warehouses—

A. Yes.

Q. And terminals?

A. I have the list of the terminals now.

Mr. TOBIN. Yes. That is all.

Exam. BAKER. I was going to request applicant's counsel to furnish a statement which would show the number of employees of each of the carriers involved in this consolidation classified by the type of work in which they are engaged. Will that be done during the course of the hearing?

Mr. COCHRAN. We can, I think, have that within—yes; during this week, I am quite sure.

Mr. SULLIVAN. Including office employees?

Exam. BAKER. All employees.

Mr. COCHRAN. You would like to have it in exhibit form, Mr. Examiner?

Exam. BAKER. I believe it would be preferable to put it in exhibit form.

Mr. COCHRAN. Very well, sir. It will be done, as long as we can do it.

93 Exam. BAKER. Any further cross-examination?

Mr. TOBIN. That is all

By Mr. WIPRUD:

Q. Mr. Horton, you testified, I believe, that you are an officer and director of the Horton Motor Lines, Inc., Conger Realty Company and the Brown Equipment and Manufacturing Company; is that correct?

A. Yes.

Q. Horton Motor Lines, Inc., is a common carrier; is it not?

A. Yes, sir.

Q. What is the business of the Conger Realty Company?

A. It is a realty company. They build warehouses that they rent to Horton Motor Lines, and it was primarily developed to keep from curtailing the small bank credit that Horton Motor Lines had at the time Conger Realty Company was produced. The realty company could, on its own account, borrow money for the building of terminals and Horton Motor Lines was obligated on the lease, whereas otherwise Horton Motor Lines would have to come to the Commission. So I developed a realty company that I wholly owned.

Q. Well, that is taking that in?

A. It takes it in.

Q. What is the business of the Brown Equipment & Manufacturing Company?

A. The original intended purpose of Brown Equipment & Manufacturing Company was to conduct experiments, and  
94 it was done primarily to divorce it from common carrier operations because the Commission doesn't look with too much favor upon a common carrier other than a common carrier under its rights. We felt that we were not getting the best equipment from the manufacturer to do the best job in the highway service, and the Brown Equipment & Manufacturing Company was set out—they were already part of our organization, so we just set them out in one end of the building, and they developed a separate entity. They did that so satisfactorily that they de-

veloped equipment that we now use. They manufacture steel trailers, Markolites and screw jacks, and so forth. It is quite a manufacturing plant at the moment.

Q. Who owns the stock?

A. I own it all.

Q. What is the volume of business in round figures that this company did last year?

A. Brown?

Q. Yes.

A. Give me the exhibit there, please.

Mr. SULLIVAN. When you find it, will you give him the page number so that he can refer to it, please, Mr. Horton?

The WITNESS. Yes, sir. It is on Form BMC-45, Exhibit B-6.

Mr. SULLIVAN. which page?

95 The WITNESS. Continued, which means it will be the fourth page of that exhibit. Total sales for the 12 months of 1940 were \$856,517.03.

By Mr. WIRUP:

Q. And of that amount; approximately how much involved sales to the Horton Motor Lines?

A. A considerable part of it.

Q. Would you say the major portion of it?

A. No; I wouldn't say that, but a considerable portion. We are undoubtedly the largest customer.

Q. Would you say it was over five hundred thousand?

A. Probably that much.

Q. And is it proposed to incorporate the Brown Manufacturing Company in this unification?

A. Yes; it is being sold through this unification.

Q. It will be a wholly owned subsidiary of Associated Transport?

A. It will either be merged in with the assets of that or become a wholly owned subsidiary, and at the moment I can't answer your question.

Q. And is it proposed that the Brown Manufacturing Company—the Brown Equipment & Manufacturing Company continue to sell equipment to the merged company?

A. To any companies, to all companies.

Q. Including the Associated Transport, Incorporated?

96 A. Oh, yes. If it continues separate identity as a wholly owned subsidiary, it would sell to them. If its assets are taken over, as is contemplated, it would not sell. It would produce as a part of the organization.

Q. In other words, then, the Associated Transport, Inc., it would not only be a separate company, it would be a manufacturing company, is that the idea?

A. That could be. It depends entirely on how the corporate affairs are handled.

Q. I believe you testified, Mr. Horton, that you are familiar with the application in this proceeding. Is it proposed to acquire the operations and all the businesses of Consolidated Motor Lines, Inc., and include those operations in the businesses in the final unification of all these companies?

A. No. The Consolidated Lines, or at least the group who own Consolidated Lines, have an operation that is expected to be either sold or abandoned. That is a contract carrier operation. It does not come in this merger.

Q. Does the United Sales come in this merger?

A. No. Yes; it is, because it is wholly owned by Consolidated.

Q. What is the business of United Sales?

Mr. JOSELOFF. May I suggest that the gentleman question an official of Consolidated who will testify and can give that information more expeditiously than Mr. Horton?

Mr. WIPRUD. Yes. Yes.

By Mr. WIPRUD:

Q. There will be an official of Consolidated on the stand?

A. Yes; there will be an official of every company represented here.

Q. Mr. Horton, I believe you testified that Mr. Burt M. Seymour is the president and the treasurer of Associated Transport, Inc.?

A. Yes, sir.

Q. What are Mr. Seymour's other business connections?

A. Mr. Seymour owns either outright or is the majority owner in the Terminal Taxi-Cab Company in New York and two or three other taxicab companies in Engle, which I do not remember.

Mr. COCHRAN. Excuse me just a minute. I would like to say for your information that Mr. Seymour will follow Mr. Horton on the stand.

Q. According to your testimony, Mr. Horton, the Transport Company is still in existence?

A. I understand it is.

Q. Who are the present stockholders?

A. I do not know.

Q. Mr. Seymour, is he an official of the Transport Company?

A. No, sir.

Mr. SULLIVAN. May I say to you, sir, that there will be somebody representing the Transport Company take the stand during the

course of the hearing, some time in the next two or three days, and we can get that information from them at that time. They are not here now or we could get it now.

Mr. WIPRUD. I see.

98

By Mr. WIPRUD:

Q. Referring, Mr. Horton, to Exhibit C-1 in the application in Docket No. 1612, which is the contract between the stockholders of the Horton Transport Company, Inc., and Associated Transport, Inc., which I believe you testified was the standard form of agreement, will you please refer to paragraph 14 of this agreement?

A. Is that the one starting in the middle of page 18, please, sir? You don't have it.

Q. Paragraph 14.

A. Paragraph 14th; yes, sir. I have it.

Q. As I understand the purport of that paragraph, Associated Transport agrees with the vendor companies not to purchase any stock or interest in another motor carrier other than the companies listed in that paragraph prior to the consummation date if the pending application is approved; is that correct?

A. Yes, sir.

Q. Is there any understanding with any other motor company that will be acquired by Associated Transport after the consummation of the pending transaction?

A. We do not.

Mr. COCHRAN. I would like to, in order that there be no confusion in the witness' answer there—it might lead to confusion—Arrow Carrier Company was later added to this group.

The WITNESS. It is a part of this application.

99 Mr. COCHRAN. I understand, but it is not mentioned in this paragraph. They were added by agreement between all the parties.

Mr. WIPRUD. That is the only other company—

Mr. COCHRAN. That is all.

The WITNESS. That is all. The negotiations were in progress at the time on June 11, and they are a party to this application. I thought you understood that.

Mr. WIPRUD. That is all I had.

By Mr. SULLIVAN:

Q. Mr. Horton, I just spoke to your auditor here, and may I ask you, to refresh your recollection, isn't it near 85 to 90 percent of the extent of the business of the Brown Company and to the extent of 10 or 15 percent done with persons outside rather than the figures Mr. Horton suggested earlier?

A. I am not familiar with the percentages or breakdown of that volume of business. I do know that their volume of sales to the public has been increased recently.

Exam. BAKER. Any further cross-examination?

Mr. Woods. Yes, sir.

By Mr. Woods:

Q. Mr. Horton, in your direct examination you referred to the fact that if this application were approved there would be an operation of certain duplicate rights over a portion of the territory involved; is that correct; for a period of time, presumably until the merger was effected?

A. Right.

100 Q. In other words, the merger is not going to be simultaneous? It will take place later?

A. It would have to. That is a physical impossibility that that be done.

Q. Now, referring to the map that you have over here, and particularly to the route showing Southeastern Motor Freight, is it correct that there would be duplicate rights in operation there from Roanoke on into New York, at least into Virginia, with Barnwell's route?

A. Yes, this—there is a territory in which there is a duplicate operation.

Q. And from Lexington north there will be a duplicate right and operation with your own route as well as Barnwell and Southeastern; isn't that correct?

A. No; we do not have rights to serve from that point up to Winchester. We go through, but we do not have—

Q. But now, so far as the Knoxville-to-New York operation generally is concerned, even under the terms of the present application, isn't it possible for you to serve New York from Knoxville by using the combined routes of Transportation, Incorporated, and one of the other carriers without going up over the Southeastern route?

A. Oh, if you wanted to come all the way back down, lap around as you did and increase your run by several hundred miles, that could be done.

101 Q. It wouldn't increase your run by several hundred miles, would it, Mr. Horton, from Knoxville over into North Carolina and then up the coast into New York?

A. A study of the mileage, sir, would indicate that it is a sharp increase in mileage.

Q. Now, did you know, Mr. Horton, that Southeastern Motor Lines accepted voluntarily, pursuant to a stipulation with other carriers, a restriction on any pick-ups north of Roanoke, Va.?

A. No; I did not know that.

Q. And that its compliance order embodies that restriction?

A. I don't know anything about that.

Q. It is true, however, that in the agreement between these various carriers the inclusion of Southeastern in the proposed consolidation or control application is not necessary to the final approval of it; isn't that correct? I am referring particularly now to—I don't have a copy of your application, but I do have a digest that I obtained from the Commission here, and it shows, paragraph 12—you have that, the agreement? I refer particularly to paragraphs 12 (a) and (b) of the agreement.

Mr. JOSELOFF. You mean paragraph 15.

The WITNESS. You must have the wrong number.

(Discussion off the record.)

By Mr. Woods:

102 Q. It is 15. I have it wrong on my digest here. Paragraph 15(a) and (b).

Exam. BAKER. Will the Reporter read that last question?

The WITNESS. Oh, you are asking whether Southeastern is one of the merged companies. They are not under one of the merged companies.

By Mr. Woods:

Q. Under that section 15 (b)?

A. That is right.

Q. So that even if the application of Southeastern were not approved, you could still go ahead with this consolidation?

A. Could be.

Q. Now, Mr. Horton, are you at all familiar with the present status—strike that. Let me put it this way, first—

Mr. JOSELOFF. Mr. Woods, I don't know whether it is going to expedite matters for you or not, but we intend to put on Mr. Brock, president of the Southeastern. Perhaps your questions would be more aptly directed to him.

Mr. Woods. However, I had only three more questions. I wanted to bring out the fact that the operation is not essential to Southeastern.

By Mr. Woods:

Q. Mr. Horton, from your previous questions and answers, is it correct to say that the only point that you couldn't serve without the acquisition of Southeastern would be south of Knoxville, 103 from Nashville to Knoxville, and that brief section between Knoxville and Roanoke?

A. I have made a considerable study as to the operating rights of all of these companies, but I am not sufficiently familiar to say

"yes" to your question, because I am not sure, of my own knowledge.

Q. Well, this question was directed to the map, and let me place it this way, first: If Southeastern has no rights to pick up freight north of Roanoke, then the acquisition of control of Southeastern would give you only the rights from Knoxville to Roanoke unduplicated, and the rights from Nashville to Knoxville; is that correct?

A. A very large part of our consideration of the Southeastern operation was the fact that we could dovetail them into our operation from Washington north with practically no additional cost; whereas the maintenance of those facilities on their own account was very burdensome to their operation. That is one manner in which we do expect to provide economies.

Q. Didn't you also, however, consider it quite valuable to have that entrance into Nashville; in other words, Nashville feeding freight north into some of your other connections?

A. I don't know that Nashville as an individual point was given any special consideration. That particular territory which they serve was given consideration. It is an important territory.

Q. That is Nashville territory?

104 A. I beg your pardon?

Q. That is Nashville territory?

A. I didn't say the Nashville territory. I said the territory that they serve. They serve a wide territory. Nashville is just one of the points on it.

Q. Are you, Mr. Horton, familiar with the fact that the claimed Southeastern rights between Nashville and Knoxville have never been approved by the Commission, and, as a matter of fact, after, I think, two or three hearings have still been denied by the latest report or examiner's order?

A. I understand that there has been some controversy on the matter.

Mr. Woods. That is all.

Exam. BAKER. Any other cross examination?

Mr. Fagg. Mr. Examiner, could I have one question in connection with Exhibit B-3 having to do with depreciation?

Exam. BAKER. You may.

By Mr. Fagg:

Q. Mr. Horton, if you have that exhibit in front of you, B-3—

A. Just a moment. Let me find it. Here it is. All right, sir.

Q. Could you explain, Mr. Horton, what is meant by the words "per contract" in relationship to the percentage depreciation that you show for the year 1940 for the account of various carriers involved in this proceeding?

105 A. One of the provisions of the contract agreed upon after conferences between heads of all of these companies was that we should effect, through stipulated provisions within the contract as to depreciation, certain provisions that, in our opinion, from our knowledge of the business of our own and each other's business, would be the most equitable and the most fair, and these provisions we produce here are designated to produce that result.

Q. And, therefore, the words "per contract" mean that the board of directors of the Associated Transport, Incorporated, have determined that a fair and proper depreciation in percentages is shown on Exhibit B-3 after the words "per contract"?

A. That was not a matter of the handling of the board of directors. That was a matter of cooperative action between heads of the eight companies. See, before this contract was signed by anyone it was made agreeable, wholly agreeable, to the head of every company as representative of their company. They were the ones that made this agreement, not the board of directors of Associated Transport Company.

Q. None of the owners of individual lines jointly agreed to the depreciation percentage?

A. Yes, sir. I agreed with every other company as well as mine, and every other company agreed with every other company.

Mr. Fagg. Thank you.

106 Mr. BURNETT. I have one question.

By Mr. BURNETT:

Q. Mr. Horton, do you know anything about the rates that would be charged after the merger goes through, if the Commission grants it?

A. No.

Q. You are not qualified to say anything about the rates. Thank you.

Exam. BAKER. Any further cross-examination?

(By Mr. SHIELDS):

Q. Mr. Horton, you stated that Mr. Hellerman was treasurer, but his office and duties have been placed with Mr. Seymour during his absence from the company. Can you state whether it is contemplated he will assume the office of treasurer on his return?

A. I can't answer that question, because we know nothing about his return. We hope that he will return some time soon, but Mr. Hellerman and Mr. Davis and Mr. Arnstein were sent to China under the Lend-Lease Bill to keep the Burma Road open.

Q. If he returns soon he will assume those duties?

A. He will be given every consideration.

Mr. SHIELDS. That is all.

Redirect examination by Mr. COCHRAN:

Q. This matter, that will have to be decided by the board of directors?

A. It will have to be decided by the board of directors, yes.

Exam. BAKER. Any additional cross-examination?

107 Mr. COCHRAN. All right, Mr. Horton, you can come down.

Exam. BAKER. I have a few questions.

Mr. COCHRAN. Oh, I beg your pardon. I am sorry.

Exam. BAKER. Mr. Horton, is there any understanding, either express or implied, that any of the persons responsible for the organization of Associated Transport, Inc., would be compensated for their services in connection with sponsoring the organization?

The WITNESS. None whatever.

Exam. BAKER. Is it contemplated that the officers and directors which you have named will continue to serve in those capacities after consummation of this transaction if approved?

The WITNESS. Yes, sir. I speak for myself, emphatically yes, Mr. Examiner; and each member of the board will be on the stand before the hearing is over, and I am quite sure that they will be just as emphatic concerning themselves.

Exam. BAKER. Do I understand that someone will be present to testify in behalf of Arrow Carrier Corporation?

The WITNESS. Yes, sir.

Mr. COCHRAN. Yes, sir.

Exam. BAKER. Who will that be?

Mr. SULLIVAN. Mr. Whitehead and Mr. Ackerman both will be present as to their operations, and Mr. Arnold of the Old Transport Company will be present to identify his contract

108 and answer such questions as to the relationship between The Transport Company, the vendors in this deal, and the

Arrow Carrier Corporation.

Exam. BAKER. Mr. Horton, have any voting trust agreements, agreements with respect to management of Associated Transport, Inc., been entered into?

The WITNESS. None whatever.

Exam. BAKER. Are any such agreements contemplated?

The WITNESS. None. None at all.

Exam. BAKER. With respect to your reference that it was desired to enter into an employment agreement with Mr. Butchio, the contract with McCarthy for acquisition of the stock of McCarthy Freight System, Inc., is not contingent upon the execution of an employment contract with Mr. Butchio; is it?

The WITNESS. No, Mr. Examiner. We give consideration to Mr. Butchio's peculiar case—or particular case as we do in the case of Mr. Ackerman or Mr. Buckley and Mr. Whitehead. We

have an unusual situation not similar in all respects to the owners or partial owners of some of the other companies, and I personally am quite concerned that Mr. Butchio be continued as a part of our organization for several years to come. He is a very valuable man.

**Exam. BAKER.** But there is no contract as of the present date?

**The WITNESS.** No; there is not.

109 **Exam. BAKER.** The application lists certain stockholders of Associate Transport, Inc., with the number of shares of stock held by each which totals 71,480 shares of common stock. Is that the amount of common stock outstanding at the present time?

**The WITNESS.** Seventy-one thousand, sir, I haven't verified that total, but that is—

**Exam. BAKER.** The total does not appear in the application?

**The WITNESS.** If that is the total, that is correct, sir.

**Exam. BAKER.** There have been no additional sales of stock since the filing of the application; is that correct?

**The WITNESS.** No, sir. This indicates the amount of \$1 stock that the organizers put in to defray the expenses plus—which totals sixty—about sixty-two thousand plus the nine thousand shares for which we purchased these records, and so forth, from the Transport. Total about 71,000-odd shares, sir, is right.

**Exam. BAKER.** And there have been no additional shares issued in addition to the shares that are listed in the application—

**The WITNESS.** No, sir.

**Exam. BAKER.** — is that correct? Is it contemplated that that additional common stock will be issued prior to consummation of this transaction?

110 **The WITNESS.** No, sir.

**Exam. BAKER.** In what manner was it determined as to how much stock each of the parties involved would be permitted to subscribe in Associated Transport?

**The WITNESS.** Originally, as a result of the formula that we produced to be the measuring stick of this company—I think possibly I should say one thing that I don't believe has been said as yet. In addition to the preferred stock which is to be issued for approximately 80 percent of the net tangible worth of the company is to be issued a common stock of \$1 par value. That common stock has its first relation to the earnings of the company after tax and after provision for dividends on the preferred stock to be paid to the owners of that company, and we made a computation, each company having its own records as to operations, provisions for income tax, a very close estimate as to the amount of preferred stock that might be issued each company. It was easy to then

ascertain the amount of common stock that each company would receive, the common stock being the measuring stick of their participation in the profits of the company, both in the profits that their operation would pour in and in turn the measuring stick against which common stock dividends would be declared, so we decided in the first instance that each company would subscribe in this \$1 stock to 10 percent of the number of common shares that

111 they were going to get, and we found that on certain individuals that was likely to be a burden and at the same time it did not produce what we were all very anxious to produce, was some situation under which Mr. Seymour could be tied into the company to make his tie-in definite for a long time, not that we distrusted him, but we felt that his participation in the management of his company would inure very greatly to the stockholders' benefit, and we wished to tie him in, and someone among the group produced the theory that we would insist that Seymour buy certain of this stock, we ourselves taking less of it, and we did that so that Seymour bought—I think he bought one-half of this proposed issue of \$1 stock, and the balance of the heads of the companies put up the balance, as is shown in this exhibit. So that is the manner in which that was produced. That was expense money in the first instance, but we used that vehicle to tie Mr. Seymour into the company.

Exam. **BAKER.** Perhaps you would explain the theory behind the basis established in the contract for determining the number of shares of both preferred and common stock that would be issued to the selling stockholders.

The **WITNESS.** In the first instance, sir, we wish to bring to the Commission at this time an application free of everything that we had any reason to believe the Commission might object to. We did not wish to capitalize to a hundred percent the net value  
112 of the company. So we decided on 80 percent as being—leaving a sufficient margin of safety so that the Commission, if they were asked to say that a share of stock of par \$100 was worth a hundred dollars, they could easily say so since they would know that there was \$125 of real tangible value behind it. In the consideration of the common stock we had to reduce—we had to keep within reasonable limit the issues of number of shares of common stock, else, it being a one-dollar par, would run the total capital stock to be issued in excess of the net worth, and we did not wish that, so after many computations we found that the final formula adopted would produce one share of common stock for each \$2 of earnings of the company after taxes and after provisions for dividends, and on preferred stock would produce such

a number of shares of common stock as would not have us capitalized in excess of net tangible value.

**Exam. BAKER.** Was there any particular reason for selecting the year ending April 30, 1941, as a basis for determining that?

**The WITNESS.** We wished to produce the latest possible figures that were practical to produce.

**Exam. BAKER.** There are exceptions made in certain instances to application of the general provisions of the contract with respect to the amount of stock. Taking them one at a time, Barnwell

Warehouse, it is provided that in lieu of the general provisions, the consideration shall be 1,390 shares of preferred and 17,800 shares of common subject to certain adjustments.

113 Could you explain the reason for the exceptions?

**The WITNESS.** That is a mathematical calculation, sir, that had to be developed because peculiarly Barnwell Warehouse & Storage Company owned a fairly good block of Barnwell Brothers Company. Both companies were being sold in here, so we are going to find ourselves faced with buying a company owning stock in that company that we ourselves are, and the computation by auditors developed that that formula would produce for Barnwell and Barnwell Warehouse exactly the same return for the values that they turned in that all the rest of us got.

**Exam. BAKER.** In connection with Moran Transportation Lines, it is provided that in addition to the stock which would be deliverable under the uniform provisions of the contract 29,000 shares in addition would be delivered to the stockholders of that company.

**The WITNESS.** Studies of the Morgan organization indicated that they had been buying from other companies in such manner that the control of the buying could be changed under this proposed unification. They had been buying at such prices that the excess price that they paid, the savings which would accrue to the Moran account, would be the equivalent in their formula of 29,000 shares of common stock.

**Exam. BAKER.** In other words, you feel that their earning 114 power was greater than reflected?

**The WITNESS.** Was decreased in that amount by buying from the people that we bought from.

**Mr. SULLIVAN.** Excuse me. We will have a witness on, and I think Mr. Horton has overlooked one factor. Part of that is accounted for by the fact that the application of the I. C. C. accounting practices to the accounts of the various companies resulted in an injustice to the Morgan Company because of the fact that certain of the buying and, therefore, profits on the disposal of capital assets were reflected in a company owned by the same stockholders, the purchasing company, therefore part of that

was given effect to in this as well as that factor of additional costs of parts, tires, and gasoline and oil and the like.

Exam. BAKER. You will—

Mr. SULLIVAN. We will have a witness, both the accounting witness—I mean the accounting witnesses and Mr. Altwater will touch on that of the Moran Company.

The WITNESS. Speaking for myself, Mr. Examiner, I can say I am thoroughly aware of the situation that produced that, and am in agreement that that is the fair and equitable way in which it should be treated.

Exam. BAKER. I believe the contract itself in self-explanatory in connection with the additional shares of stock to be delivered to Southeastern Motor Lines?

115 The WITNESS. Yes, sir.

Exam. BAKER. In connection with Transportation, Incorporated, it is provided that in lieu of the general provisions, the consideration shall be 5,500 shares of common stock subject to adjustment. Will you explain for the record the reason for that?

The WITNESS. Transportation, Incorporated, is a common carrier operating primarily in North and South Carolina and Georgia and Tennessee. That has lacked executive leadership long schooled in the trucking field and has been hampered in that manner. From our own knowledge, and Mr. Barnwell and myself have a very intimate knowledge of that particular business, its operation is important in this deal, but it had not—did not show a strong net worth statement nor strong operating statement. We were convinced, as we studied its operations, that we would be able to make it a very strong and a very good profit-earning organization, but under the formula they would not have gotten enough in either preferred or common stock to be interested in any kind of a deal, so it became a matter of barter and trade, and that was the final designation of 5,500 shares was what we gave for it.

Exam. BAKER. Actually, they wouldn't have gotten any stock under the provisions of the contract?

The WITNESS. No.

Exam. BAKER. In connection with determining the con-  
116 sideration in the case of Arrow, it was provided that a deduction should be made from net worth to take care of the preferred stock not being acquired under this transaction. There is also certain preferred stock outstanding in the case of Horton Motor Lines. Was it intended that any reduction similar to the case of Arrow would be made?

The WITNESS. It is provided for, sir. It is provided for in our Exhibit G that an amount—that our net asset account be reduced by the amount of that employees' preferred stock, and I have agreed to call it the minute a favorable order might come down

from the Commission that employees' stock will all be called. Provision is made for it in our contract. In the case of the Arrow stock the Transport Company have paid a down payment on an option on the stock of that company, bought certain of the preferred stock, and have not concluded the deal by payment of the final money. We have not required that they go out into the market and buy from those others who own some preferred stock that stock until it is known that this deal is approved by the Commission. Then they have—they have—it is provided, since this is a called stock at 105 per share, that certain deductions be made from their net asset account so that the money will be available with which to call that stock, and that will be done.

**Exam. BAKER.** Is the preferred stock of the Horton Motor Lines callable at par?

117 **The WITNESS.** Yes, sir; par plus accumulated dividends, but there will not be any dividends beyond three months because we pay dividends on it quarterly. That particular stock, Mr. Examiner, has one or two unusual features. It can only be sold to an employee of the company. It stops paying dividends the minute the employee leaves the pay roll of the company. If they attempt to hold the stock they get nothing for it, and it is callable at our option at any time we propose to call that stock in.

**Exam. BAKER.** With the exception of Arrow and Horton, it is true, is it not, that applicant is acquiring all of the outstanding stock of each of the companies here involved?

**The WITNESS.** Yes, sir; they are acquiring it in the case of Horton because before they take over my stock I will have retired this employees' stock; and if the callable provisions of the preferred stock of the Arrow permit such fast handling it will be true in Arrow's case.

**Exam. BAKER.** Mr. Woods referred a while ago to the fact that Arrow Carrier Corporation—perhaps it wasn't Mr. Woods, but Arrow Carrier Corporation is not listed in paragraph 14 as one of the companies with which contracts had been entered into. Have the contracts been amended that have been entered into with the respective stockholders to permit applicant to acquire Arrow's stock?

**The WITNESS.** We called—

118 **Mr. COCHRAN.** Let us refer to the exhibit, then, for your answer to that, if I can find it.

**The WITNESS.** Show me which one it is, will you? Do you know which it is?

**Mr. SULLIVAN.** That is Exhibit J. It sets out the detail, I think.

**Exam. BAKER.** This is what he is referring to, the question—

**Exam. SULLIVAN:** Yes; but I think your answer comes from Exhibit J.

The WITNESS. Yes, sir.

Exam. BAKER. Exhibit J is the contract.

Mr. SULLIVAN. Yes; of the Transport Company.

The WITNESS. Of Arrow's contract; isn't it?

Mr. COCHRAN. It is under Transport.

The WITNESS. Where is it?

Exam. BAKER. Off the record, Mr. Reporter.

(Discussion off the record.)

Exam. BAKER. Will we go back on the record and explain that, please? Back on the record. Mr. Horton, I will repeat my question: Have the contracts entered into with the stockholders of the respective companies been amended to permit Associated Transport, Inc., to acquire the capital stock of Arrow Motor Lines—Arrow Carrier Corporation?

119 The WITNESS. An understanding was reached by the stockholders of all of the companies, and we had a meeting in New York where the designees, each person designated to act for each group of stockholders, met and agreed to the terms and conditions under which Arrow came into the group and exactly the same formula and the same plan that we agreed simultaneously on June 11 as to each company.

Exam. BAKER. Have there been any other amendments to the contracts entered into?

The WITNESS. No.

Exam. BAKER. Are all of the contracts with the respective stockholders identical with the contract contained in the application, the stockholders of Horton Motor Lines?

The WITNESS. Yes, sir.

Exam. BAKER. That is with the exception of the name of the designee—

The WITNESS. Yes, sir.

Exam. BAKER. And the number of shares of stock involved? Paragraph 20 of the contract conditions the effectiveness thereof upon agreement being entered into with the Commission of Internal Revenue and approval by the Secretary of the Treasury with respect to taxes. Has such an agreement been entered into?

The WITNESS. With the Treasury Department?

120 Exam. BAKER. Yes.

The WITNESS. Not as yet. We propose to get from the Treasury Department, if we can get it, a closing agreement indicating that this is a tax-free reorganization. I am quite convinced in my own case that unless such closing agreement can be had I would not go into the detail because I would have to turn around and give all the money to the Government, or most all of it.

MR. SULLIVAN. Well, conferences leading to that have been had with the parties.

THE WITNESS. Conferences leading to that have been had, and we understand that closing agreements will be had.

MR. SULLIVAN. Well, they wouldn't issue them until after the Commission has decided it here?

THE WITNESS. They won't go into it until after the Commission has made their decision.

EXAM. BAKER. There is attached to the contract for acquisition of the stock of the Horton Motor Lines an agreement between applicant, B. M. Seymour, and the stockholders of Horton Motor Lines with respect to resale of common stock of applicant. Have similar agreements been entered into with the stockholders of each of the other companies?

THE WITNESS. Yes, sir.

MR. SULLIVAN. All of the dollar stock, Mr. Horton, is covered by similar agreement?

121 THE WITNESS. That is what I understand I am answering, when he said it was to all of the other companies, and I said—

MR. SULLIVAN. Not only Mr. Seymour's, but all of the dollar stock. I mean the question of the stock for original working funds was covered?

EXAM. BAKER. The question I wanted to develop is, Are all the persons who are now stockholders of the Transport, Inc.—have they entered into the contract under which they agree not to resell the stock within a period there specified?

THE WITNESS. Yes, sir.

EXAM. BAKER. Is my interpretation of that agreement correct, that that restriction applies only to the stock which is being purchased cash at \$1 a share?

THE WITNESS. That is correct.

EXAM. BAKER. It would not apply to the stock—

THE WITNESS. We don't restrict the sale of the Seymour stock. He derives any benefit that might accrue under that. He may not sell it because he is not the owner of the stock coming into it combined. In the case of everyone else we will get preferred and common stock for turning in our businesses. In Mr. Seymour's case he doesn't because we are very much interested in seeing that he holds this stock.

EXAM. BAKER. Rather, as to whether any of the present or prospective stockholders have entered into any agreements  
122 contemplating resale of the stock which they will obtain by virtue of the acquisition here involved?

THE WITNESS. If any of them have, it is not within my knowledge.

Exam. BAKER. You do not have?

The WITNESS. No.

Exam. BAKER. Do you have any plans formulated, any definite plans, with respect to subsequent consolidation of these carriers into applicant?

The WITNESS. That is—I hardly know how to answer that question, Mr. Examiner, because there are so many angles to the thing that I doubt my ability alone to explain the situation so that it will be intelligent. We do have such plans; yes; but that will have—we have to go into the angle of legal right—legal—we have to be controlled by the legal limitations of disposal of assets of a corporation to another corporation and all of those things, so that other than to say that we do contemplate and have plans with which to produce this merger, I cannot go much further than that. We have talked these things many times, and we have developed many ways in which it can be done.

Exam. BAKER. You do propose that applicant shall take over all of the properties of each of the carriers here involved?

The WITNESS. Yes, sir.

123 Exam. BAKER. Within a year?

The WITNESS. Yes, sir.

Exam. BAKER. And that it will assume all of their liabilities?

The WITNESS. Yes, sir.

Exam. BAKER. How about the—

The WITNESS. We propose to do that as fast as it is reasonably practical. We can't name calendar days as to exactly when that can be done. That is what I am trying to avoid.

Exam. BAKER. What about the motor carrier companies? Do you propose to maintain their separate corporate identities, or will they also be consolidated?

The WITNESS. I should say that whatever is the most practical or feasible theory of control will be adopted.

Exam. BAKER. You have no definite plans with regard to those—

The WITNESS. I don't. I don't think I have heard any other member of the board mention it, not in general board meetings.

Exam. BAKER. Would the same thing be true with respect to the subsidiaries of Consolidated Motor Lines—

The WITNESS. Yes, sir.

Exam. BAKER. The motor carrier subsidiaries?

The WITNESS. Yes, sir.

124 Exam. BAKER. That is, you don't know whether or not they will be consolidated?

The WITNESS. No.

**Exam. BAKER.** Would you name the reasons as to why you feel that it is impracticable to effect an immediate consolidation of these carriers?

**The WITNESS.** Well, it is just—it is just a tremendous big job that it is a physical impossibility to do that and continue to serve the public. In the two or three cases of my own experience where we bought a much smaller carrier and absorbed him in our own operation it was a tremendous task and we had a very large organization to do it. Physically, as a practical matter, to throw these companies immediately into one operation is just a practical impossibility. It just can't be done. We can do it step by step over a period of months, but there is just no other way it can be done. If we were to attempt to put it altogether, first thing we would have to do would be stop doing everything and move warehouses and garages, and so forth. We couldn't perform the service and do it at the same time. We can do it step by step, but we couldn't do it a hundred percent at one time.

**Exam. BAKER.** The application in MC-F-1613 states that no commitments have been received with respect to sale of the securities to be offered to the public. Is that still true?

**The WITNESS.** Yes, sir.

**Exam. BAKER.** Have any underwriters been approved, or  
125 any tentative understanding been reached with respect to that?

**The WITNESS.** None whatsoever.

**Exam. BAKER.** Has any consideration been given to the possible solicitation of competitive bids in the marketing of those securities?

**The WITNESS.** We have felt, sir, that this stock would be sufficiently attractive that no trouble would be met in disposing of it, and, having developed that thought, we have given no particular attention to the method in which it would be done.

**Exam. BAKER.** Do you feel that it would be practicable to market the securities by asking for competitive bids from underwriters, or do you feel it preferable to arrange for underwriting through private agreement?

**The WITNESS.** Mr. Examiner, I haven't had sufficient experience of my own in that connection to really give you an intelligent answer. I don't know. I would be guided in that matter by the consensus of opinion of the board of directors.

**Exam. BAKER.** If sold at par, the proceeds of the stock to be issued would amount to a million and a half dollars?

**The WITNESS.** Yes, sir.

**Exam. BAKER.** Can you state by items for what purposes that one and a half million dollars would be used?

The WITNESS. A part of it, and a considerable part of it, would be used for the purchase of equipment with which to take  
126 care of our expanding business. These companies presently operate equipment that costs in excess of \$8,000,000, so if we attempted to provide 10 percent—vehicles to take care of 10 percent increase in business, that would take half of this million and a half from that point alone. I would not like to see much more than that go in new equipment. I would like to see the other go in operating accounts to make more stable and more solid the company.

Exam. BAKER. Have any estimates been made as to how you will segregate that one and a half million dollars?

The WITNESS. No.

Mr. SULLIVAN. There will be some testimony on that along general lines when the accountants are available to take the stand. They are still pursuing that as to items and haven't reached definite conclusions yet that we have been able to discuss.

The WITNESS. We know that we have some liens out, Mr. Examiner, for instance, that are at a fairly high rate of interest with relatively short-term loans. It is entirely possible that some of this money might be used to retire such loans to put the company in a more—less unsound position.

Exam. BAKER. In considering these companies collectively, do you feel that their present working capital is adequate or inadequate?

The WITNESS. For the moment it is, and it is as far as  
127 we can reasonably contemplate the future. Going on beyond a reasonable degree in the future, I don't know. I don't know what is going to be required. That has got to do too much with the cost of labor, the cost of material, and the cost of everything.

Exam. BAKER. You said "for the moment," it is. Do you mean for the moment it is adequate?

The WITNESS. I mean it is adequate for the moment, the cost at which we do business today. Even I don't know what our costs for repairs and costs for labor will be. It could rise so sharply that the money in this company would not be adequate.

Mr. SULLIVAN. I think the Examiner directed his question to the working capital of the company without this million and a half dollars to which you referred.

The WITNESS. It is not adequate. In our own case we are very sharply embarrassed from time to time, and ours is a substantial company.

Exam. BAKER. Upon what basis would you determine the amount of working capital that a carrier reasonably would require?

Mr. SULLIVAN. I don't think there is any set formula that applies to all carriers, sir.

The WITNESS. That has relation, of course, to their needs for funds for expansion and needs for funds to liquidate their obligations of a fixed nature such as bank loans or equipment notes. I don't think there is any form that would apply to them all. You have to study each one on its own funds. This million and a half dollars very well does the job for these particular eight companies. It might not be half enough for eight other companies, or it might be twice as much, but it does the job for these eight companies.

Mr. SULLIVAN. And that, Mr. Horton, was approved from discussions before the million and a half was weighed with respect to operating these companies as a group?

The WITNESS. Yes, sir. Yes, sir.

Mr. SULLIVAN. Otherwise, if they were to get an adequate amount of working capital individually, assuming there was some miracle before individually they could get it, it would require much more than a million and a half dollars?

The WITNESS. Yes, sir.

Exam. BAKER. I think probably the Reporter needs a rest. We will recess for 10 minutes.

(There was a short recess taken.)

Exam. BAKER. Come to order, please.

Mr. Cochran—

Mr. COCHRAN. Yes, sir.

Exam. BAKER. Is it anticipated that you will introduce any evidence detailing the economies which are anticipated will result from this unification?

129 Mr. COCHRAN. Mr. Seymour will be on the stand following Mr. Horton, and he has a rather detailed statement to make concerning economies.

Exam. BAKER. Mr. Horton, in case this proposed consolidation is effected, how is it proposed that the operations would thereafter be conducted? Would there be any separation into divisions?

The WITNESS. Oh, yes; there would be. It would be conducted by divisions, sir.

Exam. BAKER. And is it anticipated that the officers of the carriers now involved would be in charge of the respective divisions—

The WITNESS. Yes, sir.

Exam. BAKER. In their territory?

The WITNESS. That is contemplated, sir.

Exam. BAKER. You have named a number of advantages in the transaction. Can you think of any disadvantages of a large motor carrier as opposed to a small motor carrier?

The WITNESS. Each has its advantages, Mr. Examiner. Their advantages vary so or are so different that it is difficult to make a comparison. I know that the large motor carrier is—has—less flexible operation by virtue of their size. The small motor carrier, in my experience—and I have been a small motor carrier; I know that—can do—they can change at will. They can change  
 130 the policies of the company by taking off their cap and they can decide to do something by walking down the street, getting a Coca-cola. A large company cannot move that fast. It is more cumbersome. The small motor carrier can identify himself—being a small motor carrier, he usually has a smaller number of customers, and he can establish an intimacy of relation with his customers. There may be neighbors and friends and aunts and uncles and cousins to the extent that the large motor carrier can never hope to do. The only way in the world that the large motor carrier can attempt to compete with the small motor carrier is attempt to give better service over a long, long period of time than the smaller motor carrier can give. He cannot develop the intimacy of relationship that the smaller motor carrier can develop.

Exam. BAKER. Do you anticipate that there would be any increase in overhead expenses as opposed to the small carriers as an aggregate?

The WITNESS. Any increase in the overhead of the small carriers?

Exam. BAKER. I will change that question. Do you anticipate that the overhead expense, after the consolidation here proposed, would be more or less than the aggregate overhead expense of the carriers involved at the present time?

The WITNESS. Well, sir, I just have no way of knowing what  
 131 the aggregate overhead expense of small carriers might conceivably be.

Mr. SULLIVAN. He means these carriers, Mr. Horton.

The WITNESS. These eight carriers?

Mr. SULLIVAN. Yes.

Exam. BAKER. That is right.

The WITNESS. There will be less. There will be less operating overhead.

Exam. BAKER. Do you anticipate that the consolidated organization would retain the traffic presently handled by the constituent carriers?

The WITNESS. Yes, sir; with an increase to that traffic.

Exam. BAKER. I notice that in the case of all except one of the carriers here involved, there was a substantial increase in operating revenues in 1940 over 1939, but, except for the two New England carriers, McCarthy and Consolidated, I believe there was a reduc-

tion in net income. Can you explain why that was? Is there any general explanation for it?

The WITNESS. There is, so far as it applies to the South Atlantic Seaboard. The year 1940 was a chaotic year from a truck operator's standpoint. The flow of traffic, which generally is fairly steady and in reasonably even amounts both north and south, were greatly disrupted last year. In our own experience we would have a heavy flow of traffic north-bound for two or three years' period with return vehicles lightly loaded. The balance of freight  
132 was badly out of adjustment, and in the next two or three weeks we would find the situation reversed. I think that New England carriers suffer less from that unusual situation than others, because I think that they—the increase in business started in New England, and I think that the demand for machine tools largely supplied out of New England developed a stronger tone of business in New England than was true in the South Atlantic States.

Exam. BAKER. Would consummation of the transactions here proposed result in the displacement of any of the employees of the carriers involved?

The WITNESS. On the contrary, we are likely to be much perturbed about our ability to get the employees needed. There will not be any displacement of employees.

Exam. BAKER. Are you having any difficulty at the present time in obtaining sufficient employees?

The WITNESS. Yes, sir.

Exam. BAKER. Your answer was "yes"?

The WITNESS. Yes, sir.

Exam. BAKER. Is it anticipated that any of such employees would have to change their places of employment?

The WITNESS. A very small amount of change. There might be, in the case of moving a warehouse from Shelby to Ashboro, moving it within the same State 50 or 75 miles, but that is likely to be all. The most of such changes that might be imagined  
133 to come out of such a unification will not come because we will use the same man, except in a different manner, in an attempt to eliminate confusion and delay within our own organizations.

Exam. BAKER. Has applicant any plans for alleviating any hardships that might result to an employee as a result of a transfer of his place of employment?

The WITNESS. We haven't anticipated such transfer, sir. To such minor extent—just as in my own case. We have never had any difficulty with that at all. When a man is transferred he usually goes to a better job.

Exam. BAKER. Do you ordinarily pay him—

The WITNESS. If a man has to be transferred he just can't make the grade with the company. Our people don't move downstairs. They move up or move out.

Exam. BAKER. What I had in mind is, in case a terminal is eliminated, and you establish a terminal or enlarge a terminal at another city, it might be necessary to move employees from one city to another?

The WITNESS. We take care of that. Same provision.

Exam. BAKER. But, to your knowledge, applicant has made no definite plans in that respect?

The WITNESS. No. We know—I can say this, sir, as a policy: That I am confident that every one of the board would agree on instantly that our need for good employees is so great that we  
134 are going to be very careful that we are not going to do anything that they would consider to be unfair treatment of them.

Exam. BAKER. Do I understand it Mr. Horton will be recalled to testify, particularly as to Horton Motor Lines?

Mr. COCHRAN. That is right.

Exam. BAKER. That is all the questions I have.

Mr. COCHRAN. May I just ask one further question, Mr. Horton?

By Mr. COCHRAN:

Q. You spoke of operating the consolidated companies in divisions?

A. Yes, sir.

Q. What particular reason—would you attempt to maintain their names, if it is possible, for a while under a division of, say, Associated Transport?

A. Oh, yes; I would like to—

Q. For what particular—

A. We certainly would like to have the Consolidated Division or the Moran Division, because those names have tremendous value and goodwill, and we would not like to have that eliminated until such time as Associated Transport may have developed on its own account in any such operations goodwill of its own account. We do not want to too quickly change the identity of these organizations who have been performing these satisfactory services for a long time by throwing onto the public a new name with which they are not familiar.

135 Q. That phase of the operations would not affect the consolidation of the company or delay it?

A. No; and in further answer to the Examiner's question just before recess, I know that we can transfer the assets of the corporation to the top company very quickly, to the Associated Trans-

port Company. That can be done just as quickly as certain legal requirements can be met, such as a very short length of time, but I at the time had the idea that his questioning was directed wholly to complete integration of operations. It isn't physically possible to take five warehouses in New York City and move them overnight into any one location. There is no one location available to do the job.

Q. Is it contemplated, in the event this application is approved and that there is a consolidation of these companies, that it will be made effective as speedily as possible, giving consideration to traffic as it is now being operated and accounting systems, and the various and sundry items that would have to be brought together into the group?

A. Yes; recognizing that many of the economies we hope to produce in this unification can only come after the elimination of duplicate expense. Certainly, as a matter of practical economy, we wish to produce that just as fast as we can.

Mr. SULLIVAN. Well, in that connection, Mr. Horton, lest there be any false impression here, the reason we suggest in the application that it would take a year to bring about this  
136 complete consolidation was for certain definite reasons; was it?

A. Yes, sir.

By Mr. SULLIVAN:

Q. I mean without giving the reasons?

A. Yes, sir.

Q. And moving into those reasons, was there the question—and you go ahead and elaborate on it—of using the combined experience of the persons who personally constitute the board of directors to determine the manner in which this complete consolidation should be brought about?

A. That is true.

Q. Will you tell us some of the reasons why you weren't in a position, say, last week or last month, to reach a direct plan to lay before the Commission at this time, a step as to why you might put part of Moran and Consolidated together, or Barnwell and Horton together, or something of that sort?

A. Well, the board of directors of this company have only been in existence since the 11th day of June, during which time we have been tremendously busy producing this application and all of the things that go with it. In the many conferences that I have had with the individuals making up the board and with the board itself, I know that these things are contemplated, that it is a part of the plan, but we just have not had time to say: "This week we will do this thing, and next week we will do this thing."

137 Q. Well, is there a further question, perhaps along the same line, as to perhaps the willingness of the persons involved to produce their books for the examination completely, if it is to be presented to a man that will be his mortal competitor?

A. That is true. Mr. Barnwell and I have talked many times about the overlapping expense within our operations, and I know that he has made his studies on it and I know that I have made my own studies, and we have checked on some of the notes. I would not reveal the inner secrets of my business to Mr. Barnwell because this application might be denied, and he is a virile and active competitor, and I just would not want him to know all the secrets of my business, nor he in turn would not want to reveal all of the secrets of his business to me until this application is approved. There are many things that can be done that will better the service and produce economies.

Q. Aside from that, Mr. Horton, there are certain things which can be taken care of but which necessarily take a reasonable time to accomplish unless you are going to throw money out of the window, such as the point of expiration of license dates?

A. The expiration of insurance dates is also an important question. If all of those insurance policies were canceled out it would constitute a serious loss. If each policy could be continued until its expiration date, and then be picked up by the form of insurance, we would not have that loss.

Q. And unless the insurance policy is among the groups  
138 written by various insurance companies, it really is necessary to let them expire before they can be advantageously replaced through one or more insurance carriers?

A. That is right.

Q. In other words, you have the task of consolidating the insurance of these various groups as well as the consolidation of operations?

A. We have the same thing as to license plates. That again involves a lot of money.

Q. And those plates expire more or less about the same period of time, along towards the end of the year?

A. And the relicensing will require a considerable study as to the placement of this equipment.

Q. Some of these carriers, particularly in the North, have some intrastate rights, and have their equipment covered with intrastate plates which would raise questions of transfer of those plates which would in turn take time?

A. That is right.

Q. Including their rights to operate in intrastate?

A. That is what I meant when I said the practical things we had to do just requires some time. It would be thoroughly im-

practical, in my opinion, to immediately relicense all of the equipment as we at the moment might decide it might be operated, knowing that further developed plans of three months later might show that equipment might be operated in territory not licensed, and to throw out all of our equipment we couldn't abandon all the portion we do have now.

Q. Does it boil down to this, Mr. Horton: That considerable consideration was given to the minimum period which these experienced operating heads felt would be reasonably necessary in order to establish the complete consolidation and a sound basis without undue waste of assets and undue expenses?

A. That is right. We believe we can produce a very large share of the complete unification within a year.

Q. It is felt that we could complete it all unless there is some legal difficulty beyond our control which blocked it?

A. That is right.

Q. Such as some State refusing to agree that the Interstate Commerce Act completely supersedes their power, something that we can't foretell at this time.

A. That is right.

Mr. SULLIVAN. That is all the questions I have.

Mr. COCHRAN. That is all.

Exam. BAKER. One other question, Mr. Horton: In the hearing in the proceedings last year on the application of the Transport Company, there was some evidence as to plans of that company to establish an insurance subsidiary for the purpose of carrying its own insurance. Have there been any similar plans in connection with Associated Transport, Inc?

The WITNESS. No; not as developing an insurance company. We have made comparisons in our talks. I have had them myself with Mr. Arbour. Mr. Arbour's company is a self-insurer and our own company of approximately the same size is not a self-insurer. We have talked between ourselves as to the advantages and disadvantages of each form of insurance handling. We agreed, I think, that whichever, in a more careful study, could be made available without reluctance on the part of any company after a favorable opinion by the Commission, that whatever is the best, most feasible and most economical method is the method we will follow. We do not contemplate establishing an insurance company.

Exam. BAKER. Mr. Cochran, do you desire to offer Exhibit No. 1 in evidence?

Mr. COCHRAN. Yes; it is marked for identification. I would like to offer it in evidence at this time.

Exam. BAKER. Exhibit marked for identification as Applicant's No. 1, will be received in evidence.

(Exhibit No. 1, Witness Horton, received in evidence.)

Exam. BAKER. Witness excused.

(Witness excused.)

Mr. COCHRAN. Mr. Seymour.

B. M. SEYMOUR, being first duly sworn, testified as follows:

141 Direct examination by Mr. COCHRAN:

Q. Mr. Seymour, what is your place of residence?

A. 42 Bradford Road, Scarsdale, N. Y.

Q. What are your business connections?

A. I am president of the Terminal System of New York City, president of Yellow Products of New York City, and president of Metropolitan Securities Holding Company, also of New York City.

Q. You are also president of Associated Transport, Inc.; are you not?

A. That is correct.

Q. President and treasurer?

A. Yes.

Q. Will you describe those companies, the activities of those three companies you just referred to—first referred to.

A. Terminal System is a company that operates about 575 taxicabs in New York City. The company serves the railroads in New York. Metropolitan Securities Holding Corporation is a company that owns half of the stock of Metropolitan Distributors, which is a truck leasing company operating in New York and in Jersey about 2,000 trucks. It also owns all of the stock of a truck and taxicab selling company. Yellow Products is a seller of gasoline and oil products.

Q. What connection have you, if any, or what financial interest have you, if any, in any motor carrier, common carrier  
142 by motor, common carrier by rail, or common carrier by water?

A. I own, I think it is, 200 shares of preferred stock of the Keeshin Company. That is the only interest that I have other than Associated Transport.

Q. Do you have any idea what percentage of the voting stock that 200 shares represents?

A. I don't know what percentage. I know it is very small.

Q. As much as 5 percent?

A. I would think less than that.

Q. Will you state how you became connected with the group of people who formed Associated Transport, Inc., and later on developed contracts and applications on file in this hearing?

A. The first conversation that I had, in so far as the Associated Transport is concerned, would go back to probably last December. I had conversations with Mr. Arbour and with Mr. Horton, and with all of the gentlemen who are presently here representing their respective properties, and several who are not here, and it was a result of those early conversations that conversations did become more serious the early part of this year, finally culminating in the application which is now being heard.

Q. You as president of Associated Transport, Inc., executed the contracts on behalf of that company that are now represented in this application. You, also, as president of Associated Transport, signed this application; is that correct?

143. A. Yes, sir; I did that upon the unanimous approval and instructions of the board of directors.

Q. You heard Mr. Horton's statement today on the witness stand, did you not—statements I meant to say?

A. I did.

Q. Are the statements with reference to the officers and directors of Associated Transport correct?

A. Yes, sir.

Q. I believe your salary, he stated, was \$3,000 a month or \$36,000 a year; is that correct?

A. Yes, that is correct.

Q. Are you acquainted in detail with the main contracts executed by these different companies and Associated Transport, as well as the exhibits attached thereto?

A. I am.

Q. Is it a fact that all of those contracts are similar in character, with certain small minor exceptions such as dates and such as names and figures with reference to dollar stock?

A. The main contract is identical. The variance is in the exhibits.

Q. That is true both as to carrier companies and affiliated companies?

A. Yes.

Q. Does this application contain all of the exhibits of Horton Motor Lines and Conger Realty Company?

144. A. Yes.

Q. Does this application contain all of the exhibits of both common carriers and affiliated where there are differences in the exhibits in the case of Conger or Horton, as the case may be?

A. That is correct.

Q. You are prepared to answer any questions concerning any of the exhibits, or concerning the terms of the contract, are you not?

A. I am.

Q. You are the owner now of a certain number of shares of stock of Associated Transport, Inc. Will you state briefly how you came into possession of those shares?

A. The offer, in so far as the 31,000-odd shares of stock is concerned, was originally made to me in behalf of all of the interested designees by either Mr. Horton or Mr. Arbour, or both. They stated that they were anxious that I have a proprietary interest in the business if I were going to manage the business for them. On the other hand, they likewise insisted that they felt it was only fair and reasonable that any stock which I purchased be surrounded with—with limitations as to my ability to sell it, which I was entirely agreeable to do. The transaction was finally completed on the basis that, as against the—some \$62,000 which the sale of that number of common shares would produce which, in the  
145 opinion of everyone, was about what was going to be necessary to defray the cost of accounting and legal expense and such other expense necessary, incident to the prosecution of this application, would be about that amount, and on that basis I subscribed for half of the stock and paid for it some fifteen or sixteen thousand in cash, and gave my—gave my secured note or supported by collateral for the balance. On that basis, of course, if the application be denied, why, my loss proportionately would be little out of line because the loss for the other half would be distributed over some other hundred or 125 stockholders. However, I felt that it was altogether a fair proposition and it was set up that way.

Q. From the statement you have just made, do you mean to say that unless this application is approved the stock you purchased from Associated Transport will probably have no value?

A. I am very certain of it.

Q. You will be reimbursed, to some extent, by reason of the fact that you have had an opportunity to make a salary working for Associated Transport during this period of time?

A. That is correct.

Q. You heard Mr. Horton's statement, did you not, Mr. Seymour, in reference to the purchase of certain records, transcripts of testimony, audit reports, and so forth, from Transport, Inc.

Do you agree with the statements he made without repeating  
146 the testimony, or do you wish to make any additional statements?

A. I think at this point, Mr. Cochran, it might be well if I read into the record my reasons, the most important reasons, which have prompted the Associated Transport application, and from that I would think we would then be in a better position. We would have established a better foundation for detailed testimony.

Q. All right, Mr. Seymour, if you wish to go ahead with that, you may do so at this point. In the first place, did you prepare that statement?

A. I did.

Q. Will you hand the Examiner a copy, please?

A. Yes.

Mr. COCHRAN. It is a prepared statement, Mr. Examiner, that Mr. Seymour wishes to read at this time.

The WITNESS. I shall read it slowly.

By Mr. COCHRAN:

Q. Please read it slowly so that it can be understood by the—

A. First, and most important, is whether the proposed consolidation of the eight carrier companies and the four noncarrier companies would be consistent with the public interest.

Seven of the carrier companies are and have been successful in the territory they serve, and the owners have, over the past six months, devoted their time assiduously to the difficult and  
147 generally considered impossible task of integrating many companies on the basis of a 100 percent exchange of stock.

The plan is in fact a cooperative venture contemplating the issuance of Associated Transport preferred stock up to 80 percent of net worth without equipment or real estate appraisals and common stock on the basis of one share for each \$2 of net earnings after preferred dividends and all taxes for the period ending April 30, 1941. That has reference to the formula, implied. We are gratified that we have completed our negotiations in such form that there is not presented with this application any problem as to property values, employment contracts, or as to the assistance of bankers and organizers.

Whether the approval of the application would be consistent with the public interest leaves only for consideration whether there remains substantial motor carrier competition and whether service would improve. On the subject of competition, Chairman Eastman stated, in his opinion in the Transport case, that it was "the most ambitious attempt so far to create a unit of large size." He did not, however, feel that there would be a lack of motor carrier competition. This application includes but eight of the twenty-eight carrier companies involved in the Transport application.

If one or twenty consolidations or expansions of operations failed in the past to produce economies or improve service,  
148 it would still be no criterion in so far as our contentions are concerned because where you find successful business, large or small, you find good management. The properties included in this application, with one exception, are outstandingly

successful and now comparatively large, and the same men who built them from the ground up would continue to manage the applicant company where, in the case of most of them, substantially everything they have would be invested.

The test of the ability of these men to work in harness is evidenced by the months of negotiation and the result produced. Before self-made men, such as these, put their properties into a common pot, there must be a genuine confidence and trust, a complete reversal of some months ago, of suspicion and distrust, engendered by years of bitter competition. Men who build large businesses from small beginnings have an understandable pride. Considering these facts, and that it is proposed to exchange stock of successful businesses, it is easy to understand that there is no question in the minds of these men who know their business that the advantages are substantial, that economies would be produced and a more efficient service performed, and it is certainly axiomatic that the shipper automatically becomes a joint beneficiary in any benefits flowing to the company, which would result from improved service at a lower cost.

There is no question that through movement of freight will be expedited by from 12 to 36 hours, depending upon the 149 transfers eliminated. Our national defense can effectively be served when 3,500 pieces of equipment can be concentrated at any given point along the Atlantic Seaboard within 24 hours, and certainly no form of transportation could be more flexible than the applicant company under single ownership. Consolidation of the eight carrier companies produces a complete answer to the urgent problem of maximum utilization of equipment.

If it be assumed that any employee would lose his job as a consequence of the proposed consolidation, such assumption cannot be supported. Week by week the labor shortage becomes more acute and volume continues to increase. If the trend of volume increase of the past four years continues without considering additional increase resulting from better service, which applicant could supply, then the problem of securing even sufficient labor will become increasingly serious. It is, on the other hand, a fact that increased efficiency will make it possible to handle sharply increasing volume without employing as many additional people, which would be fortunate under conditions presently existing.

I will now address myself briefly to the subject of operating economies. For purposes of comparison, I am using expense figures for the year ending April 30, 1941, for both carrier and non-carrier companies.

150 Insurance and safety expense: In informal discussions with officials of insurance companies, I have ascertained that present insurance costs can be reduced by approximately \$275,000 annually. Insurance and safety expense for the 12 months ending April 30, '41, totaled \$1,055,686.86.

Sales tariff and advertising expense: A maximum saving of \$150,000 per year will be effected against the 12 months' total of \$734,893.25. Obviously, freight solicitation must be streamlined and overlapping of solicitation eliminated.

Maintenance and garage expense: By the establishment of three well-equipped central repair shops, the inauguration of unit rebuilding, presently so necessary, and a program of preventive maintenance, it is our considered judgment that we can reduce this expense by \$450,000 annually. Total expense under this heading for the 12 months was \$2,273,441.55. We have taken into account increases in tire expense.

Terminal expense: For the 12 months under discussion, the terminal expense was \$5,305,245.78. Under existing conditions, a very considerable time will be required to realize the full saving possible under single ownership. Of course, there would be many terminal changes quickly made. This would be true in 151 the case of Horton and Barnwell and Moran and the New York Division of Consolidated. Wherever one terminal can be used for two it will be done. Much new terminal construction would have to be undertaken. After careful study we feel that terminal expense could be reduced next year by \$250,000 and by \$400,000 the second year. These projections would not be affected by terminal expansion due to volume increase. These reductions are exclusive of savings in the expense of pick-up and delivery service and local cartage, which could be reduced by \$300,000. This is about 20 percent of the 12 months' expense.

Transportation expense: It is known that reductions in this account will be offset by increasing cost of gasoline and oil and motor fuel taxes. There would be no pay-roll reductions. Our collective opinion is that this account will increase \$125,000. The 12 months totaled \$4,691,932.90.

Administrative and general expense: Last year's expense under this heading was \$1,844,016.22. Careful study indicates an easily achievable saving of \$175,000 annually to be completely realized within 12 months. Forty percent of this reduction can be saved on communication cost alone. These projections total \$1,600,000, less \$275,000, representing increase in transportation expense 152 and \$150,000 for expenses of the central office. The net economies show \$1,325,000 before taxes. As impressive as this figure may appear, we consider it not only conservative but ridiculously low.

At that point I might say that there are many here who have made careful studies of those who are interested, and their figure averages about twice the figure that I have stated. Contributions to earnings through greater utilization of equipment and reduced freight handling can, in my opinion, equal the direct expense reductions we have projected, but we deem it conservative to consider these additional earnings as a cushion for increased taxes. We have been assured by large commercial banking institutions that money for our needs is available to purchase equipment for cash at  $2\frac{1}{2}$  to 3 percent interest. This would represent a very substantial saving as against interest rates heretofore and presently charged.

Requirement for working capital: In the consolidated statement, the cash on hand, exclusive of accounts receivable, is adequate for one week's operation. So long as volume continues to increase and with increasing taxes, these companies individually cannot hope to improve their financial position against the downswing in business which many feel is inevitable, due to world dislocation.

153 With working capital of \$1,500,000 it will be possible to purchase equipment for cash with  $2\frac{1}{2}$  to 3 percent money. It is believed that no great difficulty will be experienced in selling 15,000 shares of 6 percent convertible preferred when the companies are presently earning, without considering reductions in expense and other additions to earnings, about six times preferred dividend requirements.

General comments: I previously stated that there was sound reasoning back of this unusual application. These reasons I can summarize as follows:

There is a desire to distribute the risks which are inherent in this business. There is a conviction that no other plan will provide the same protection against uncertainties of the future. There is the fact that only by this means will it be possible to effect operating economies, reduce freight handling, and improve the pay-load factor, to secure money for longer periods at low interest rates, to raise urgently needed capital. How else can cash dividends be paid on common stock in a business which expands 35 percent each year?

There is finally the all-impelling reason—security. The owners would protect their families against paying inheritance taxes with trucks and terminals by perpetuating their business through continuity of management having a proprietary interest.

154 Lastly there follows repetitious as well as additional reasons why this consolidation is consistent with the public interest. It would make possible a much greater utilization of

equipment. It would facilitate through movement of freight, shortening the time between New England and New York State by from 12 to 36 hours.

It would require fewer pick-up and delivery trucks. In New York City, as an example, one such service could do the job of the present six. It would leave substantial competition as is illustrated by the charts we have prepared and which will be introduced. It would be possible for a well financed and sound company to solve more of its own technological and terminal problems, thereby reducing road failures and speeding up freight handling at terminals.

In conclusion: This consolidation would not be encouraging "bigness" in the motor-freight industry but provide the only means of offsetting rapidly increasing operating costs and higher taxes. How else can even present rate levels be maintained and the public interest better served?

It is the intention of the applicant to become the sole operating company just as quickly as it is legally and practically possible, with the expectation that it will operate present companies as divisions until such time as Associated Transport is as well known and enjoys the same good will as the present operating companies.

Q. Who is contemplated being in charge of these divisions upon the consolidation, if it is permitted, Mr. Seymour?

A. Same gentlemen who have built the businesses.

Q. Those gentlemen who have been referred to are also members of the board of directors of Transport; are they not?

A. They are the only members of the board of directors other than myself.

Q. And Mr. Arnold?

A. Representing Transport, yes.

Q. About how long would it take to bring about a consolidation and merger of these companies in the event the application is approved? I mean an effective unification of operations?

A. Well, I would certainly think, Mr. Cochran, that unless we encounter obstacles that are not anticipated, that certainly the year which we have stated could be bettered.

Q. You are satisfied it could be all done well within one year, complete unification of operation?

A. That is my opinion.

Q. Going back to the question I asked you a while ago, as I stated, you heard Mr. Horton's testimony with reference to the purchase of Transport records, Transport, Inc., records. Was that statement in accordance with your understanding?

156 A. Yes, it was.

Q. Mr. Seymour, have you any understanding or agreement with any person whereby you may receive from any source any additional stock in Associated Transport, Inc.?

A. None at all. I would also like to add to my question, in so far as the material from Transport Company is concerned, by the payment of 9,000 shares we become the owners of everything that they have, audits and—

Q. All records?

A. Engineering studies and records of every character:

Mr. COCHRAN. That is true.

By Mr. SULLIVAN:

Q. By that last answer you didn't mean there the corporate records?

A. No. No.

Q. Or any of their stock or anything of that sort? They are a separate entity?

A. No.

Q. You meant the records applicable to this?

A. I meant our engineering records and studies and everything—

Mr. COCHRAN. Mr. Examiner, the witness is ready for cross-examination.

Exam. BAKER. Cross-examination.

Cross-examination by Mr. Fagg:

Q. Mr. Seymour, did you hear the testimony of Mr. Horton?

137 A. I did.

Q. Both direct and cross?

A. Yes, sir.

Q. Would you say that the public interest would include the shippers? Does it not? The public interest, does that include the shipper? The term "public interest," does that include the shipper and receiver?

A. Yes, sir.

Q. Would you say that their interest in this consolidation, if granted by the Commission, would be to their benefit?

A. Very decidedly.

Q. For what reason would it be to their benefit?

A. For a combination of reasons, Mr. Fagg. First, as I have previously stated, I know of no way that a motor freight system can continue to do a good job unless something is done to offset the increasing costs of doing business, and certainly in doing that for themselves they must likewise do the same kind of a job for the shipper. There can be no question that under single ownership that

the movement of freight can be substantially expedited and there can likewise be no question that in all contacts with shippers those things which are important, or those things which are matters of irritation can, to a very great extent, be eliminated.

Q. And are you familiar with the provisions of the Act, Part II, that requires the carriers to establish their rates based  
158 upon economical and efficient operation cost plus a fair profit?

A. I am acquainted with them. I am not a student of rate making.

Q. You are acquainted with that provision in the Act, though?

A. Yes. Yes, I am.

Q. And you think that if the Commission grants the application filed and heard here today that that will react to the benefit of reducing the cost in operation of the consolidated companies?

A. I will answer your question this way, Mr. Fagg. I know of no way that rates can be frozen where they presently are, or where rates can be affected other than by having units that are in a position to earn a substantial or a fair return on their investment.

Q. In your statement which you read, did you state the total capitalization of the Consolidated companies would be less or more than the present individual capitalization of the companies?

A. I didn't state, but I heard Mr. Horton's testimony, and his testimony is correct.

Q. That the new capitalization would be less?

A. Yes.

Mr. Fagg. Thank you.

159 EXAM. BAKER. Mr. Seymour, in that respect are you positive you are correct? As I understand, Mr. Fagg, by "Total Capitalization of the present companies," you refer to their capital stock outstanding; is that correct?

Mr. Fagg. I would call capitalization whatever form that the new owners would consider as capital in relationship to a basis for the determination of return upon investment under the provisions of the Act.

The WITNESS. I understand Mr. Fagg's question to mean whether or not the—whether or not the company was being blown up or whether the stock was being watered or whatever the common phrase is. Is that what you mean?

Mr. Fagg. That was it, in relationship to what the shippers have to pay under the Act; and what we are concerned about is really inflation from the present position of the eight separate companies to one consolidated company, and as I understand it, Mr. Examiner, the answers from both Mr. Seymour and Mr. Horton were that that was not being increased, and from the position of shippers, that is exactly what we want, is that no inflation—

Exam. BAKER. You had reference to capital assets used in the business rather than to securities outstanding; is that correct?

Mr. Fagg. That is right, the same as the Commission recognized in establishing rates that the shippers have to pay.

160 Mr. COCHRAN. May I just ask one question there?

Mr. Seymour, isn't it a fact that the preferred issue, plus the contemplated common-stock issue, the total amount of that in dollars, will be less than the net tangible assets of the companies?

The WITNESS. Well, on a very quick calculation, I would say that it would be about two to three hundred thousand dollars less.

Mr. COCHRAN. That answers the question, I think, Mr. Fagg.

Exam. BAKER. Any further cross-examination?

Mr. WIPRUD. May I inquire, Mr. Examiner?

By Mr. WIPRUD:

Q. I believe you testified, Mr. Seymour, that the Transport Company has stock in Associated Transport?

A. Yes.

Q. Has it any other relation or is there any other relation between Transport and Associated Transport other than as a stockholder?

A. None at all.

Q. Who owns the Arrow Transportation Company at the present time?

A. Well, the Transport Company has an option which was executed with the stockholders of Arrow; oh, I think, some time last September or October, at which time the Transport Company paid to the stockholders of Arrow a hundred thousand dollars against

a total purchase price of about \$1,100,000. During this last  
161 spring the Transport Company then purchased all of the outstanding preferred of Arrow for about—I think it was \$107,000. Not all of it. There remained, I think, some thirty or thirty-five thousand of preferred that was not included, so Transport has the hundred thousand dollars outstanding on the option, I think it is, about \$107,000 they have invested in preferred.

Q. Who are the stockholders of the Transport Company now?

A. Kuhn, Loeb.

Q. Did they advance the \$100,000 for this option?

A. They did, yes; that is correct.

Q. So, to the extent they have this investment, the exchange of stock between Arrow, the stockholders of Arrow and the stock—and the Associated Transport would accrue, of course, to that banking-house?

A. That is correct.

Q. I notice in Exhibit—if you will refer to Exhibit A-1-D, in Docket No. 1613—that the Phoenix Securities Corporation is a stockholder in Associated Transport.

A. Yes.

Q. To the extent of 2,271 shares?

A. That represents about a 35 percent stock interest which they have owned for, I think, eight or nine years in Consolidated.

Q. In Consolidated?

162 A. Yes.

Q. I see.

Did you hear the testimony of Mr. Horton in regard to the Brown Manufacturing Company, and the relationship between that company and the Horton Transportation Lines, Inc.?

A. Yes, I did.

Q. Can you state whether at this time it is the purpose of Associated Transport to continue that kind of relationship between the Brown Company and—or similar relationship, rather—between the Brown Company and Associated Transport?

A. I think perhaps I will have to answer your question by putting the wagon before the horse. The Brown Manufacturing Company has been included, or the negotiations to include it were carried on for, first, a practical reason. One was that we couldn't include the Horton Motor Freight Line unless we included the Brown Equipment Company, and, secondly, there was a very serious question in our minds whether we would want to do it even if we did not have to do it, even so far as Mr. Horton is concerned. I think I have made a more careful study of the activities of the Brown Equipment Company, or at least a more recent one, than Mr. Horton has. I know the Brown Equipment has made an endeavor over the past two or three years to become engaged in the general—in the sale generally of their trailers and their tractors and their other automobile accessories which they make. I  
163 also wanted to find out, for reasons of our own, whether or not—whether or not the purchase of equipment by Horton from the Brown Equipment Company wasn't something that we ought to look into pretty carefully so far as auditing was concerned, but I did find that over a period of several years that the Horton Company has always bought the equipment at the identical price that the equipment has been sold to others. I find that very religiously every time that the Horton Company was to buy equipment, whether it be tractors or trailers, that they advertised for bids, and I have seen—the auditors have brought to me—advertisements they have run in the Detroit papers and San Francisco papers and wherever might be the center of people engaged in that business.

Answering your question specifically as to what may be their intention, I don't know. Perhaps I shouldn't say this because there may be some—there may be some truck manufacturers or some trailer manufacturers here. I am not altogether sure that if perhaps an offer commensurate with what we think is the value of the Brown Equipment Company is made we might accept, but it hasn't been a matter that has received complete attention, I think principally because this kind of an application is so difficult to conclude that it took about all the time we could get together.

Q. In your studies of the Brown Company, what would you say that the volume of business, annual business, would be, 164 approximately?

A. I think, to get an accurate picture, you would almost have to break it down by the activities which they are engaged in. You would have to break it down as to parts and then you would have to break it down as to the specialties that they manufactured.

Q. Just in general, Mr. Seymour, would you say that the figure of \$850,000 would be approximately the total?

A. Oh, yes, I think that is it—that is substantially their volume—that is true.

Q. And the major portion of that would be sales to the Horton Transportation Lines, Inc.?

A. I think that—I think that Horton has bought a major part of Brown's trailers and tractors, and I think that the percentage goes down in so far as parts and the like, and things of that kind that they manufacture.

Q. Referring to the United Sales, a subsidiary of Consolidated Motor Lines, are you acquainted with their business?

A. Yes, that is strictly a—strictly a purchasing company.

Q. I see.

A. Owned a hundred percent by themselves.

Q. I see. And they in turn sell and purchase—or accessories to these—

A. Yes.

Q. What would you say in round figures the volume of 165 business would be there?

A. I wouldn't have that exactly. I can get the figures for you.

Mr. JOSELOFF. We will have a witness to give that to you.

Mr. WIPRUD. Oh, all right.

Just one other question, Mr. Seymour.

Mr. WITNESS. I might—I might inject this at that point: I am sure that, in so far as the Associated Transport is concerned, that if the application be approved by the Commission that its

business will be conducted on a very simple basis where it will be engaged in rendering a common carrier service and where the company will buy that which it has to have.

By Mr. WIPRUD:

Q. In other words, the Associated Company would be a common carrier solely?

A. That would—I think that would certainly be their goal. You can't—in getting together several companies, you can't—they don't all come in just the way you hope that they would.

Q. But, so far as your present plans are concerned, Associated would be an operating company solely?

A. Oh, yes.

Q. Just one further question, Mr. Seymour: I think in your statement you stated that you had assurances from leading bankers as to certain financing. Could you elaborate on that a little bit?

A. That goes back—many of my conversations, or the beginning of the conversations go back to last year. There certainly is no reason for—reason for not saying who they are, for that matter.

Q. Will you state that for the record?

A. Yes. I have had many meetings with the president of the Guaranty Trust Company, with the Manufacturers Trust Company, and commercial bankers have become much more anxious to do this type of banking than they have been heretofore. Up until a few years ago they made no effort to take any of the business which is going to motor manufacturers' finance companies.

Q. You are referring now to equipment financing; are you?

A. Oh, yes. Yes, that is what I had particularly in mind. And, as Mr. Arbour can tell you, I think it is a matter of public record that the Consolidated have a very advantageous arrangement with a large bank within the last few months which solved their financial problems quite considerably.

Q. You are not referring now in your discussion to the underwriting of preferred stock?

A. No. No; I am talking about money that costs him much less than he had paid for it heretofore, in amount that made it possible for him to clean his picture up and at the same time to amortize it over several more years than he had been accustomed to doing heretofore.

Mr. WIPRUD. That is all I have, Mr. Examiner.

167 Exam. BAKER. Any further cross-examination?

Mr. JOSELOFF. I would like to ask Mr. Seymour one question.

By Mr. JOSELOFF:

Q. With regard to your testimony on United States, you know, do you not, that this company, subsidiary of Consolidated, sells to the public as well as to Consolidated?

A. No, I didn't know that.

By Mr. SHIELDS:

Q. Mr. Seymour, what position do you hold with Transport, Inc. at this time?

A. I have no connection with Transport at all.

Q. None whatever?

A. None whatever.

Q. As president of the principal applicant here, could you say what percentage of the preferred stock and common stock, when issued, will be held by the Transport, Inc., as owner of Arrow carrier?

A. Oh, I would think it would be something between 6½ and 8½.

Q. How will that compare with the amount of preferred and common stock as may be held by the Horton Motor Lines?

A. That would be—that would be about 20.25 percent of Mr. Horton's—

Q. Horton Motor Lines will hold about 25 percent?

A. No; the Horton Motor Lines' percentage of the common stock, I think, is—I don't know what the audits may disclose.

They haven't been typed yet. I would think that Mr. Horton's interest in Associated Transport would be about 35 percent.

Q. As compared with 6 percent that will be held by Transport, Inc.?

A. Yes.

Q. The only voting stock will be the common stock?

A. No; both the common and preferred are voting stock.

Q. Well, the common stock will be held by all of these companies somewhat in the same relation as the preferred stock?

A. No, no; there is—the ownership is—I mean the present holdings by stockholders of the operating companies varies greatly.

Q. I understood from the explanations that had been made that preferred stock would represent about 80 percent of the tangible assets, and will be taken over.

A. It will be exactly 80 percent.

Q. And it will be distributed to the various companies in proportion to the tangible assets that are turned in?

A. It will be distributed to the stockholders of the presently operating companies.

Q. Well, will the common stock be distributed somewhat in the same manner?

A. Yes; in proportion to the number of companies that they have that are coming in.

Exam. BAKER. To clarify that question, isn't it true, 169 Mr. Seymour, that the common stock is distributed in proportion to the earnings of these various companies?

The WITNESS. That is correct.

By Mr. SHIELDS:

Q. Then your answer to me is corrected to that extent, that your common stock will be issued in proportion to the earnings of the company and the preferred stock in proportion to the net assets?

A. Yes; but both the preferred and the common stock will finally reach the present stockholders of the underlying companies in the same proportion that they now hold stock in the operating companies or the selling companies.

Q. Well, going further, assuming that is correct, I just stated that the—or asked you if the common stock is to be issued on the basis of the earnings and the preferred stock on the basis of tangible, net tangible assets?

A. That is correct, yes.

Mr. SHIELDS. All right. That is all.

By Mr. SULLIVAN:

Q. You don't own any stock of the Transport Company?

A. No.

Exam. BAKER. Any further cross-examination?

Mr. WIPRUD. May I inquire of counsel, does the record show who owns the stock of Transport Company now?

Mr. SULLIVAN. Mr. Seymour said Kuhn, Loeb did.

Exam. BAKER. Mr. Seymour answered your question a while ago, didn't you?

170 The WITNESS. Yes.

Exam. BAKER. Didn't you state that Kuhn, Loeb—

Mr. WIPRUD. Owns all of the stock.

The WITNESS. Yes; they own every share of stock, so far as I know.

Exam. BAKER. Any other cross-examination?

Before—in view of the lateness of the hour, I will reserve my questioning of Mr. Seymour until tomorrow. You will be present tomorrow, Mr. Seymour?

The WITNESS. Yes. Yes.

We will adjourn until 9:30 a. m. tomorrow morning.

(Whereupon, at 4:50 o'clock p. m., August 18, 1941, the hearing was adjourned.)

171 Before the Interstate Commerce Commission

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

HEARING ROOM "B," I. C. C. BUILDING,  
WASHINGTON, D. C.,  
*Tuesday, August 19, 1941.*

Met, pursuant to adjournment, at 9:30 a. m.

Before VERNON V. BAKER, Examiner.

Additional appearance: Thomas P. O'Brien, General Organizer,  
International Brotherhood of Teamsters, Chauffeurs, Warehouse-  
men & Helpers of America, 815 Fifteenth Street, NW., Wash-  
ington, D. C.

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## PROCEEDINGS

Exam. BAKER. Come to order, please.

Are you ready, Mr. Cochran?

Mr. Cochran. Ready.

B. M. SEYMOUR, resumed the stand and testified further as follows:

Mr. COCHRAN. Mr. Seymour was being cross-examined at the close of the testimony.

Exam. BAKER. I thought his examination was completed, but I have a few questions that I want to ask him.

Mr. COCHRAN. That is what I thought.

Exam. BAKER. Before we proceed with Mr. Seymour, have you any idea as to when Mr. Reicher will be ready to testify?

Mr. COCHRAN. I am sorry, but Mr. Reicher is not ready to come yet, but he will be here tonight.

Mr. SULLIVAN. Do you mean when he will be available to give his testimony?

Exam. BAKER. Yes.

Mr. SULLIVAN. Monday morning.

Mr. COCHRAN. I did not know about that.

The WITNESS. I understand that is correct—Monday morning.

Mr. SULLIVAN. The delay is caused by the fact that there is a physical mechanical task involved in the printing of his docu-

ments, which will make it impossible for him to have them  
174 in shape before that. They will have to be proofread, and  
so forth.

Exam. BAKER. Very well.

Mr. Seymour, yesterday you mentioned that you were interested  
in the Metropolitan Securities Holding Company. I do not know  
whether you stated the extent of your interest in that company  
or not.

The WITNESS. I own about 30 percent of the stock of Metro-  
politan Securities.

Exam. BAKER. You do not control that company?

The WITNESS. No.

Exam. BAKER. Does any other single stockholder hold a ma-  
jority of the stock in that company?

The WITNESS. No; no, it is about 80 percent—I am talking  
now of the Metropolitan Securities Holding Company, which, in  
turn, owns only half of the stock of Metropolitan Distributors,  
which is a truck leasing company.

Exam. BAKER. Yes.

The WITNESS. About 80 percent of Metropolitan Securities is  
owned by the Greenebaum family, Mr. Yagle, and myself.

Exam. BAKER. How much does the Greenebaum family own;  
do you know?

The WITNESS. Of Metropolitan Securities?

Exam. BAKER. Yes.

175 The WITNESS. Oh, I would think somewhere in the neigh-  
borhood of 27 or 28 percent, and then they own all of the  
50 percent in Metropolitan Distributors.

Exam. BAKER. In connection with the proposed transaction last  
year of the Transport Company, in attempting to acquire control  
of a number of truck leasing companies, do you know whether or  
not any of those transactions were consummated?

The WITNESS. They were not.

Exam. BAKER. Do you hold any office at the present time in the  
Metropolitan Distributors, the trucking company?

The WITNESS. I am a director.

Exam. BAKER. Do you propose to continue in that office?

The WITNESS. Well, it would not make much difference  
whether I did or not. I do not believe I have been to a directors'  
meeting now for about 15 to 18 months.

Exam. BAKER. How many members are there on the board of  
directors of that company?

The WITNESS. Five.

Exam. BAKER. Would there be any possibility of Metropolitan  
Distributors being managed, in cooperation with and in coordina-  
tion with the operations of Associated Transport Company?

The WITNESS. Oh, very definitely, no. Metropolitan Distributors is very much managed by Leon Greenebaum.

Exam. BAKER. I asked Mr. Horton this question, and I would like to get your reaction as president of the applicant.  
176 What is your present plan, if you have any, with respect to consolidation into the applicant of the noncarrier companies of which you acquire control?

The WITNESS. If it could be done, and if it be the right thing to do, I would imagine it would be advisable if the Brown Equipment Company remained a subsidiary of the Associated Transport Company. On the other hand, there is a rather serious question in my mind as to whether the Associated Transport may not well decide to sell the property. I do not completely agree with Mr. Horton that it has the value that he attaches to it, because much of its activities and what it may contribute from the standpoint of traffic or volume of business, I do not know, but it is engaged in the rebuilding of motors of the Horton Motor Lines. That represents a substantial part of its activities, and certainly, insofar as Associated Transport is concerned, we would not carry on a unit rebuilding program located at Charlotte, because that is the extreme end of the territory that Associated Transport would serve. The unit rebuilding activity would certainly be more in the center of the territory. It would not be at one end of it. I am not altogether sure that a company of the size of Associated Transport, or a company of the size of the eight companies included in this application, could very well make it possible to have vehicles built

to its specifications and at a price certainly competitive with  
177 the price that Brown sells its equipment for, because Mr. Horton, or the Brown Equipment Company, goes very far in overbuilding their tractors, and their frames are heavier than the standard tractor, and the rear axles are about six times the normal size of a rear axle that can customarily be bought. I am not quite sure that they should go quite that far.

Exam. BAKER. Have you given any consideration in that respect to the United Sales Company, a subsidiary of Consolidated Motor Lines?

The WITNESS. My view as to the United, and likewise as to the Conger Realty Company, and the terminal owning company of McCarthy, is that Associated Transport could probably get along very well without any of them.

Exam. BAKER. By merging their properties into Associated Transport?

The WITNESS. Yes. Well, in the case of Conger and the Southern New England, their activities are limited strictly to the owning and the financing of terminals which are used in their business.

I can realize that they have performed a helpful service in so far as the present owners are concerned, but I do not recognize the same need in so far as the Associated Transport is concerned.

**Exam. BAKER.** Application No. 1612 states that authority is sought, first, to acquire control of the eight carriers, and, second, if control is acquired subsequently to consolidating the aforesaid companies with applicant, it was not intended that that second clause include the non-carrier companies; was it?

**The WITNESS.** No. That had specific reference to the carrier companies.

**Exam. BAKER.** Applicant, in case this transaction is approved, does not propose to engage in any contract carrier operations at all, does it?

**The WITNESS.** None at all.

**Exam. BAKER.** Have you given any consideration to the method which would be used in marketing the securities which are proposed to be sold to the public?

**The WITNESS.** No; never have gotten beyond the belief, which is the belief shared by all of the interested people, that there should not be any difficulty experienced in selling preferred stock—a preferred convertible stock, paying 6 percent, where the earnings are presently at the level that they are at, with the trend of business and the record that all of the individual companies have.

**Exam. BAKER.** Do you believe that marketing the security through competitive bids would be practicable?

**The WITNESS.** I can assure you, Mr. Examiner, that they will certainly market them through competitive bids.

**Mr. SULLIVAN.** I wish you would explain your question a little.

**Mr. Examiner.** I think you are using that in a rather technical sense, are you not?

**Exam. BAKER.** What I had in mind is, instead of making a private agreement, that is, making an agreement through private negotiations with an underwriter, you would solicit bids from various underwriters.

**The WITNESS.** That is what I understood.

**Exam. BAKER.** For the purchase of the entire issue of securities.

**Mr. SULLIVAN.** In a rather formal manner, you have in mind, rather than by informally trading with several underwriters and then agreeing with the one that, for various reasons, was felt to be best suited? You are thinking rather of a more formal method of doing it; are you not?

**Exam. BAKER.** Yes; that was my questions.

**Mr. SULLIVAN.** Yes; I do not think Mr. Seymour understood his answer was directed to that, to the idea that he generally did con-

tact a number of underwriters and to make the best deal possible.

Mr. Seymour. That is what I thought you meant.

Exam. BAKER. Well, you did not have in mind, then, the formal solicitation of bids.

The WITNESS. Well, I had never really considered very seriously the detailed procedure that we might follow, other than that I was sure that preferred stock, as I have described it, in a company of this kind—that I did certainly think that we would have more than one or two opportunities to market the stock. I am sure that there are going to be several of them, and, obviously, we would not know where we could make the best arrangement.

Exam. BAKER. The preferred stock will be sold at not less than par, so far as applicant is concerned; is that correct?

The WITNESS. Well, it would certainly be our goal. I don't know—as a matter of fact, I am not enough of a student of financing in that way to know, and I do not know whether there would be any discount or not.

Mr. SULLIVAN. The laws of Delaware make it impossible, according to our understanding.

Mr. HORTON. This is a Delaware corporation.

Exam. BAKER. That is correct.

Mr. SULLIVAN. Mr. Examiner, it is contemplated, of course, that in any event, before any underwriting agreement was signed, it would be submitted to the Commission.

Exam. BAKER. Yes, the application does——

Mr. SULLIVAN. It so states. I thought, perhaps, it had been overlooked.

Exam. BAKER. Mr. Seymour, last year you described in detail your plans in connection with the establishment of a system of preventive maintenance of equipment. Do you have similar plans in connection with the present applicant, Associated Transport, Inc.?

181 The WITNESS. Yes; we have. The only difference between last year and this one is that, I think, we have perfected our plans even beyond the point that we had reached last year.

Exam. BAKER. I was going to ask you if you would state for the record the advantages from the establishment of such a system, as demonstrated by your experience with other companies, and the economies which could be anticipated would result from such a system.

The WITNESS. There is some question as to whether we would finally establish two or three central repair shops. The number of units to be maintained could be two, well designed and centrally

located repair shops. It may, however, be found necessary, if the application be approved, to establish three central repair shops, to cut down the distances that the equipment would otherwise have to be transported. The greatest difficulty that we now find ourselves confronted with is the great variety of equipment, as to make and as to model. That makes it extremely difficult to install and the most effective form of maintenance. We have given consideration to a plan which contemplated the transfer of equipment from one present company to another company, or, perhaps, to two companies, with the hope that in that way we might assemble all of the Mack trucks and all of the Autocar trucks, whatever the case might be, because it is much easier to handle inspection, particularly if we have the uniformity of equipment.

182 There is great difficulty, from the standpoint of keeping an adequate supply of repair parts if we have to keep a stock for eight or ten different makes of vehicles. That which is going to be most important and most urgent is the installation of a new repair division, which would be located, probably, in one central repair shop. By that, I mean that when a motor unit fails it will be brought into the nearest garage, and whether the failure be something attached to the engine in the form of the carburetor or starter or generator, or whether it may be a transmission or clutch or a rear axle, it would immediately be dropped and the unit would be delivered to the stock room and another one would be given in its place.

So far as the operating department is concerned, it would make no difference whether it is a new one just brought from the manufacturer, or whether it is a rebuilt one. One would be as good as the other, from the standpoint of operation, and unit which failed would then be taken to the unit rebuilding department, where it would be completely overhauled. The difference between the unit rebuilding and the common practice is that a shop mechanic, where there is a unit failure, drops the unit, with the result that the tractor may very well be in the garage for a period of time. I know of instances where power units have been in garages as long as two or three weeks because of the inability to secure the complete unit,

or because a cluster of gears could not be purchased or they could not get the right carrier, whatever the case may be.

183 Under a unit rebuilding set-up those things could not be happen, and it becomes very essential presently, because I was reading only the other day of the likelihood that there is going to be a 100 percent priority on parts. I know from experience that the number of new parts that you have to buy, where you have a well organized unit building department, is—well, I know that it does not exceed 10 or 15 percent of the parts that must be pur-

chased, if it is done on the basis that it is done on in so many companies.

**Exam. BAKER.** Would not your system also contemplate certain periodical inspections and work on equipment prior to the actual failure of the parts?

**The WITNESS.** That is correct, and the change of units could very well occur at the time of the inspection periods, as well as being replaced when the failures occur. Preventive maintenance would occur, depending upon the nature of the business, the length of the haul, and the miles that was put on the equipment.. It may very well be done every two months in some operations, and perhaps earlier periods in others. Of course, under the Associated Transport proposed set-up, you would produce a much more even mileage distribution than is presently the case with the companies as they are individually operated now.

**Exam. BAKER.** Has your experience with the terminal 184 system demonstrated that great savings can be accomplished through such a system of preventive maintenance?

**The WITNESS.** In 1936, the Terminal Company purchased some 550 Chevrolet taxicabs, and during the first year that those vehicles were in operation our maintenance cost was about 1.1 cent a mile. Our maintenance was carried on then on the basis of looking after maintenance, so-called, when the vehicle would not run any more. We moved into a plan of preventive maintenance and unit rebuilding, and during the last year of the operation of these Chevrolet vehicles, our cost had been reduced to 6 mills, and had we not employed preventive maintenance and had we not had the unit rebuilding we never would have been able to have put 120,000 miles on the Chevrolet taxicabs.

**Exam. BAKER.** Do you feel that such a system of preventive maintenance would increase safety and reduce the breakdowns on the highways?

**The WITNESS.** Mr. Examiner, any time that a piece of automotive equipment is in good condition, then, as a result of periodic inspection, the possibility of failure of brakes and the failure of steering, is greatly reduced, and certainly preventive maintenance will prevent or cut down to a great extent road failures, and all of those things are induced to improved safety on the highway.

**Exam. BAKER.** I think there has been considerable testimony 185 with respect to anticipated greater utilization of equipment available. Would that greater utilization of equipment also result in less fuel used per ton-mile, say?

**The WITNESS.** Well, there is no question that that will be so. I am sure that under the proposed set-up there are many things that

could be done from the standpoint of producing increased mileage. Perhaps I should put it this way: When we talk of the motor freight business, we are, to a very great extent, talking of a relatively new business. That is true in so far as the companies that are included in this application are concerned. It has only been the matter of the last four or five years that the companies have reached that point where their operations have become profitable, at least to the point where they could expand their business to keep up with the increasing volume of business, and I think, perhaps, it is safe to say that the motor-freight business only became a full-fledged business a few years ago—perhaps five or six years ago. I know that in Mr. Horton's case there was no Horton Motor Freight Line until about 9 years ago. I know that in the case of Consolidated, it was not so long ago that freight was carried with a horse and buggy, and it is understandable that the majority of the companies have not approached the problem of greatest utilization of equipment and the getting out of their equipment the maximum performance, which can only be  
186 done by using the most modern kinds of testing equipment.

So, certainly, in the case of Associated Transport, we can, as I stated yesterday, get under way some private proving grounds of our own, because if we do not do it—if the industry does not do it—certainly the motor truck manufacturers are not going to do it. They are concerned primarily in building a truck which will take care of average requirements. There is not any vehicle that is designed and built for the motor freight business. They cannot afford to do that; at least so they are, and if we are going to have a vehicle that meets the requirements of this business a hundred percent, whether it be a trailer or a tractor, we are going to have to do most of the job. It has been because of that that Mr. Horton has moved into the building of the Brown tractor. As I stated before, Mr. Horton has gone, perhaps, to the other end. He apparently has a tractor that, at least from the size of the frame on the units that he uses, one would wonder whether it would ever wear out.

Exam. BAKER. Yesterday you stated that through movement of freight would be expedited by from 12 to 36 hours. Would you state some specific instances as to how such savings in time would be accomplished?

The WITNESS. Almost entirely due to the delays which occur in the transfer of freight from one carrier to another, going from New England down to the Deep South. It altogether  
187 depends on the number of transfers. If the freight originates with McCarthy Motor Freight Line, it then must be transferred to a company preferably going as far south as he can hook into, which may be Philadelphia, or which may be Baltimore.

If it is then transferred either at Baltimore or Richmond, it may as well be transferred to the third carrier, and on the basis of the schedules that we have now set up on two transfers, you could not fail to lose a minimum of 24 hours. Of course, that is serious likewise from the standpoint of cost of freight handling and the damage that results from it. If a carload of freight originates in New England, according to this plan, it arrives right at its destination in the trailer that it starts in. That is simple. We are talking now of a set-up that does nothing more than duplicate the kind of service that is available east and west to shippers of the Atlantic Seaboard, as far west as Chicago and on up into Indianapolis and down to St. Louis. There are many of them. There is the U. S. Freight Line. I think their volume runs somewhere around eighteen or twenty million dollars, and they show very substantial earnings, I am sure.

Exam. BAKER. You mean United States Freight Lines, motor carrier?

The WITNESS. I mean the U. S. Truck Lines of Ohio. The Transamerica has its home office in Detroit. Interstate does the same. Keeshin Freight Lines do the same. Associated 188. Transport is hopeful that it will make possible a service up and down the Atlantic Seaboard comparable to that service now available to shippers east and west.

Exam. BAKER. Speaking of the Keeshin Freight Lines, I think it is recognized generally that in recent years, at least, its profit has not been very high. Have you made any investigation to distinguish the proposed company from the Keeshin, as to the chances for successful operation?

The WITNESS. I can answer that question, Mr. Examiner, by saying, first, I am not acquainted with the comparable showing of all of the carriers, which I think the Commission classifies on the basis of a million a year in volume, and over. On a list that I looked at in 1939 there were 48 or 49 carriers that did a million a year, and over, and some two or three did a volume in excess of the Keeshin Company; perhaps two. I know Interstate did, and the only company that did not show an average profit of either 3 or 4 percent, and in excess of that, was the Keeshin Company; so that it cannot be that a company of that size cannot make money.

Answering your question more specifically, there is no comparison between what is here proposed and what was the set-up of the Keeshin Company. It is a fact that prior to the passage of the Motor Carrier Act the Keeshin Company merged several smaller operations, excluding the Seaboard, and as far as I know— 189 and I am quite sure that I am right—there was no effort made to retain the management which had built up these proper-

ties with the result that within a short time all that was retained were the rights that were acquired with the properties; and in the case of the Seaboard, more as an outsider than anything else, I think the difficulty there, perhaps, to a great extent, was due to the many changes of management that ensued over a period of time.

I do not think there is any more comparison between the Keeshin set-up and what we propose here than there is between nighttime and daytime.

EXAM. BAKER. You feel that in this particular case you are purchasing a going business, with a large volume of freight, and that is the one distinction that you would make between the Keeshin acquisition—

THE WITNESS. That is one, and the other one, Mr. Examiner, is that if I had any number of millions of dollars and I wanted to invest it, I would not pay for these properties 25 cents on the dollar as against the net worth for their properties, unless they were going to go along with the business. The business of this kind is highly personalized, as this is not a one-man business.

MR. SULLIVAN. May I suggest a question to him at this time, Mr. Examiner?

EXAM. BAKER. Yes.

MR. SEYMOUR. I would like to ask you, Mr. Seymour  
190 if in putting this together one of the considerations that the operators themselves gave to bringing you into picture, along with themselves, was to have a man familiar, in general, with the business, and a man who was not identified with any particular line, so as to act as a leavening factor between the heads of the various businesses, to be sure that no one man's ideas prevail over all the rest of the ideas of the operators in respect to how the businesses should be run?

THE WITNESS. Well, I can very well understand that it may occur to many people to ask the question why a man who has not grown up in the motor freight business has been asked to head up the consolidation of several important companies serving the Atlantic Seaboard. The reason is very simply stated, that it is not any different insofar as these properties are concerned than it would be in the case of any similar number in any other industry. It is next to impossible, I imagine, to assume that out of a great of any number of companies the men in it can agree upon any one single man to head up their own properties. That is because this business has been highly competitive. It is a business which, by its very nature, is complex and all of that, and it has produced over a period of time very substantial clashes of personalities. I have spent over the past two years almost all of my time with men in this business, and they

191 felt that, in the first instance, there would have to be a man from the outside to put this kind of a transaction together and I might describe my official function by saying that, at least in the early days, I was a sort of an official referee. Does that answer you?

Mr. SULLIVAN. Generally; but what I had in mind was that one of the functions which I deemed you would serve in this picture was to see that whatever course of conduct or policy was followed by the group in the future was one that had been well weighed, and because one man might have a stronger personality and another man a larger interest it still was not going to be a one-man company, such, perhaps, as the company that the Examiner was speaking of before.

The WITNESS. It has been my hope, and I am sure the hope of the other gentlemen, that because I have not been so close to the business as they have been, I will still be able to see the trees because I have not been so close to the woods.

Mr. SULLIVAN. That is my point.

The WITNESS. Yes.

Exam. BAKER. Speaking of through movements of freight, the proposed operation will extend all the way to New Orleans. Do you feel that it would be practicable for a trucking company to move truckload freight the distance involved between New Orleans and points on the East Coast served by these companies?

The WITNESS. Do you mean from Georgia southwest?

Exam. BAKER. I mean from New Orleans, say, up to 192 New York or Baltimore.

The WITNESS. Well, under normal conditions, I think there may very well be a question. There is a terrific divergence of opinion in the motor freight business. Some subscribe to the school of thought that the motor freight business is pretty much a shorthaul business. There are others who have effectively disproved the theory. I do not know, Mr. Examiner, what time may prove. Personally, there is some question in my mind whether freight can be profitably and satisfactorily moved a distance of that kind, yet we do know that, insofar as east-and-west carriers are concerned, a terrific volume of freight is being moved those long distances, perhaps not quite the distance from New York to New Orleans, but three-fourths of that distance.

Mr. JOSELOFF. Well, is it not true, Mr. Seymour, that the terrain from New York to New Orleans along the Atlantic Seaboard is comparatively level terrain?

The WITNESS. Oh, yes.

Mr. JOSELOFF. And that would accommodate itself to long transportation movements?

The WITNESS. I certainly think it is easier than going over the Alleghany Mountains.

Mr. JOSELOFF. And these east-and-west movements that you referred to are being run, and profitably so, through much more difficult operating territory than the territory in the instant application.

The WITNESS. That is true.

Mr. JOSELOFF. And is it not a fact, so far as you know, that transportation out on the West Coast involves very long distances through mountainous territory, as well as transportation in the Rockies, and those movements have been conducted successfully for years?

The WITNESS. Yes; motor freight goes every way.

Exam. BAKER. Mr. Seymour, referring to your statement yesterday with respect to anticipated economies in connection with insurance and safety experience, I believe you explained that sufficiently.

The WITNESS. Excepting only that in a conference with the officials of one of the largest companies in the United States the estimate made at this time was rather substantially increased on the basis of the figures that were discussed, and on the basis of the volume up to April 30, 1941, and applying the terms of a proposal made as recently as last week, that figure would move up to \$390,000.

Exam. BAKER. You estimated that in connection with a sales effort there would be a saving of \$150,000 a year, or about 20 percent. How did you compute that \$150,000?

The WITNESS. First, on the general premise that there has to be a limit to the number of freight solicitors that there would be for a single company to prevent the situation where there would be a number of them calling on a shipper. That was the first basis upon which we proceeded, and we then tackled it on the basis of giving consideration to the number of solicitors presently employed and what, in the opinion of all, would be that number of solicitors which would give us complete and adequate coverage, yet short of a point where we would not just annoy shippers to death.

Exam. BAKER. That amount is made up primarily of savings in salaries of solicitors; is it?

The WITNESS. That is so, but I do not want it to be considered that that means that those men would lose their employment, because the number that would be involved there could be otherwise used.

Exam. BAKER. You estimated, under terminal expenses, as saving about \$250,000 during the next year. Have you any definite plans for consolidation or elimination of particular terminals?

The WITNESS. Yes, sir; I know that it is the intention of counsel to have that put in the record as the representatives of the other companies appear. It has been discussed with individual companies, and I know that some considerable thought has been given to it as between Mr. Altwater and Mr. Arbour and Mr. Barnwell and Mr. Horton, where more duplication exists than elsewhere.

Exam. BAKER. There will be evidence in support of those  
195 estimates?

The WITNESS. Yes; that is right. That figure is a very modest one. It is a matter of fact, the best opinion of all is that it would be twice that amount, and we just arbitrarily cut it in two.

Exam. BAKER. You anticipate a saving in administration and general expense of \$175,000 annually.

The WITNESS. That is right.

Exam. BAKER. How did you estimate that?

The WITNESS. As to the detail, I would have to, and I will be glad to, submit the working papers on that, because that represents a variety of items.

Exam. BAKER. Well, just generally the way in which the savings would be brought about.

The WITNESS. If I can take a look at the schedule of items under that account, it will probably help.

Mr. HORTON. Let him have the operating statement.

The WITNESS. Any break-down.

Mr. HORTON. The one showing the Interstate Commerce Commission break-down.

The WITNESS. We can submit that tomorrow or the next day.

Exam. BAKER. All right.

The WITNESS. There was one large item. Going north there is a private line to New York, up to several of the terminal  
196 points of Consolidated, and from New York south there is a tie line that goes from New York, from Mr. Horton's New York warehouse, to Baltimore and down to Charlotte, and it ties in to one or two of his other points.

The communication expense is a very, very large item in this business, and under the proposed consolidation Mr. Barnwell would be tied in to the costs and to the tie line presently in existence, and the tie line going north would be extended over to Buffalo. As a matter of fact, our studies have indicated to us that private lines, as a substitute for tolls, will save easily 35 to 40 percent of present communication costs. I have not the figures on the communication costs for last year, but it was some quarter of a million dollars.

The cost of printing stationery and items of that kind has been studied on the basis of placing a contract for the requirement of

all of the eight companies as against cost to be paid, and they represent quite a considerable amount.

Going on down through the items, of course, there presently exists some duplication of law expense. There is a very considerable amount of duplication of expense incident to regulation, and all of those things could be rather substantially reduced.

I think, for the purposes of the record, however, it may be  
197 more helpful if our conclusions as to these particular items broken down would be—

**Exam. BAKER.** I think your statement is sufficiently in detail.

**The WITNESS.** All right.

**Exam. BAKER.** You also stated that the cash on hand of the various carriers presently is adequate for one week's operation. How much cash do you think a carrier should have? Should it be more than that?

**The WITNESS.** Well, it is a sort of an odd way to determine the adequacy of cash in a business, to put it on the basis of the number of days, because it is a little hard to vision a situation where a company would come to a complete cessation of operation and would still continue to maintain its hundred percent overhead; but answering your question, I would certainly think that any business that did not have cash enough to maintain its going existence for a period of at least a month would not be what you could call in a very strong financial position. I think, perhaps, a better way to answer that question, Mr. Examiner, is to say that the ratio between current assets and current liabilities is presently about even—seven. I think the current assets exceed the current liabilities on the consolidated statement by about \$250,000, and in connection

with my testimony yesterday on the subject of working capital, I meant that a better ratio of current assets to current  
198 liabilities is going to be necessary to secure the cheap money which I mentioned. Bankers have not yet gotten to the point where they consider loans as good loans unless there is a reasonable ratio as between current assets, and current liabilities.

**Exam. BAKER.** Do you think a company of the size of the one here projected would be better able to withstand a recession in business if such recession occurred at the end of the present national emergency than are the various carriers independently?

**The WITNESS.** I think it is just about the difference of a strong man withstanding a hard punch on the nose and a weak one.

**Exam. BAKER.** Is a large company as able to reduce expenses, in case of a great reduction in business, as a small company is?

**The WITNESS.** I heard Mr. Horton's testimony yesterday, and he did say that he assumed that Associated Transport, if the application be approved, would not be quite as flexible as a very small

company. I agree that that is so, providing the company that he had in mind was small to the point where the man did business under his hat; but I do vision that in the set-up of the Associated Transport none of the flexibility that characterizes any one of the individual carriers is to be lost, and that is due primarily  
 199 to the fact that on the board of directors, where matters of management policy are going to be determined, there will be no director, other than Mr. Arnold, representing the Transportation Company, who was not the proprietor of a business. The men who have built up each of the companies are going into this consolidation, and I fail to see why there can be any lost motion, and I believe also that the collective ability of nine men or ten men, such as I have described, equips a company better for the vicissitudes that may be ahead of us than any combination that I can think of or know of.

Exam. BAKER. Will there be details subsequently submitted as to the proposed use of the \$1,500,000 which would be raised by the sale of securities to the public?

The WITNESS. Yes.

Mr. SULLIVAN. There will be, sir, in connection with Mr. Horton's testimony.

The WITNESS. If the witness is permitted to make a suggestion, after Mr. Reicher has completed his pro forma balance sheet and the audits are completed—they are now completed but have not been gotten into final shape—and we have an opportunity to study them on that particular subject, I would like an opportunity to follow Mr. Reicher, in so far as the need for working capital is concerned. On the basis of the studies that we have made, I feel  
 200 that a million and a half to serve the purposes that I have endeavored to outlined, is absolutely the minimum that we must have to accomplish the things that we feel can be accomplished.

Exam. BAKER. Those are all of the questions that I have of the witness.

Mr. WIPRUD. Mr. Examiner, I have some questions.

Exam. BAKER. Very well.

Cross-examination (continued) by Mr. WIPRUD:

Q. Mr. Seymour, has the Metropolitan Securities Holding Corporation, of which I understand you are a director, any relationship with any banks or security houses; that is, through its financing or otherwise?

A. No, sir; the activities of the Metropolitan Securities Holding Company are to be the owner of 50 percent of the stock of the Metropolitan Distributors and all of the stock of General Truck

Sales and Service and a couple of smaller subsidiary companies, whose activities are operation.

Q. For the purpose of conserving time and to complete the record, Mr. Seymour, would it be convenient for you to submit a list of the stockholders of the various corporations with which you are connected and their subsidiaries?

A. Yes.

Q. And also their banking connections.

A. Yes. The companies that I am connected with have no banking connections other than the banks where we have funds deposited.

201 Q. You will submit them for the record?

A. Yes; I will be very glad to.

Mr. SULLIVAN. Excuse me a minute.

Yesterday he referred to the fact that he had a small holding in the Keeshin Lines. You would not want that included?

Mr. WIPRUD. No, no.

Mr. SULLIVAN. Only a few shares of preferred stock. You are thinking solely of those of which he is an officer, I take it?

Mr. WIPRUD. That is correct.

The WITNESS. Perhaps I did not understand the question. You want a list of the directors of the other companies of which I am a director, or do you want a list of the directors of all the companies—

Mr. SULLIVAN. Both.

Mr. WIPRUD. A list of the stockholders of corporations with which you are connected.

Mr. JOSELOFF. Those three corporations that were mentioned in Mr. Seymour's testimony, I assume—Metropolitan Securities, Metropolitan Distributors, and Truck Sales. I guess that is all you have in mind; is it not?

Mr. WIPRUD. That is correct. I understand those are the only companies he is connected with.

The WITNESS. I can tell you that right now.

Mr. WIPRUD. All right.

202 The WITNESS. In the Metropolitan—shall I give you the

Metropolitan set-up—the directors are Harry Yagle, Leon C. Greenebaum, and there are two directors who are employees of the company. The same directors are in the underlying companies; that is, the Metropolitan Distributors, which is a truck leasing company, and General Truck Sales and Service. In the Terminal System and its underlying operating companies, the stockholders and directors are myself, Daniel G. Arnstein, and employees of the company. The same is true of Yellow Products.

That is the whole story. I can confirm that, if you want me to.

Mr. WIPRUD. No; I just wanted the list.

By Mr. WIPRUD:

Q. Did you give a list of the stockholders of the Metropolitan? You gave the directors.

A. Well, the Metropolitan Distributors, which is a truck leasing company, is owned 50 percent by the Greenebaum family. I own in Metropolitan Distributors about 15 percent; Mr. Yagle owns about 20 percent, and the balance is owned by employees and miscellaneous people.

Q. None of these companies have done any financing?

A. None at all.

Q. Just one more question in regard to the Transportation Company.

Has the Transportation Company any outstanding commitments or contracts in connection with any truck carriers other than Arrow?

A. They have not.

Mr. JOSELOFF. I would like to clear up one point for the record, Mr. Examiner, with Mr. Seymour, if I may.

Exam. BAKER. Yes.

By Mr. JOSELOFF:

Q. Mr. Seymour, you testified that it is proposed that there be no contract carrier operations by Associated Transport, and I assume that you meant there would be no contract carriers in the general sense of the term, as it may be competitive with common carrier activities of the members. For example, in the McCarthy Freight System there is a small and highly specialized movement in the handling of precious metals and silver by means of special equipment. It is not your purpose, is it, to dispense with that operation, unless requested to do so by the Commission, because it is not competitive with the common carrier operations of the other members?

A. Well, I am now only reminded that I did know that there was a relatively small amount of that kind, but as against that I remember that, during negotiations, it was a matter of agreement that the contract activity of McCarthy was to be discontinued, in the event of approval.

Q. Well, Mr. McCarthy has another contract operation, which is competitive in its nature with common carrier operations, we will say, of Consolidated. That is the movement of telephone supplies and equipment, and that operation, I believe, was the operation that would be discontinued, but none of the member carriers in the Associated Transport have authority to handle precious metals and silver under a specialized contract operation, and it is not at all competitive, and I ask you whether,

under those circumstances, a policy has been formulated with regard to that movement.

A. I have not even an opinion on it, Mr. Joseloff, because I do not know anything about it.

Exam. BAKER. When you testified at the conclusion of the hearing yesterday, Mr. Seymour, I understood you to say that you would look into that feature and state definitely whether it is proposed to engage in this traffic.

The WITNESS. Yes, sir; I will.

Mr. SHIELDS. I did not get your question, Mr. Examiner—to state definitely what?

Exam. BAKER. As to whether or not applicant would engage in any contract operation.

Mr. SHIELDS. I did not have in mind any further cross-examination; Mr. Examiner, but on hearing the statements made relative to Keeshin, which seem to be somewhat material in this record, I would like to test Mr. Seymour's knowledge on the subject.

Exam. BAKER. Very well.

By Mr. SHIELDS:

205 Q. You stated, in comparing the proposal here, Mr. Seymour, with that of the Keeshin Company, that the Keeshin Company, in the progress of its development, had acquired other companies. Are you acquainted with the companies which it did acquire in years past?

A. You mean by name?

Q. Yes.

A. Not by name, but I am very certain that they did acquire small properties. I did know the names.

Q. Well, you know the Seaboard as being one, do you not?

A. That is right.

Q. And do you know whether or not they retained the management of the Seaboard Company?

A. For a short time.

Q. Do you know Mr. A. L. Mount, Jr.?

A. Yes.

Q. Do you know that he is still senior vice president of the company and in charge of it?

A. Yes.

Q. And also a director of the Keeshin Freight Lines.

A. And I know some of the management that was not retained.

Q. Mr. Mount was a full half partner, was he not?

A. I think he was a third partner. I understood that there were three Rhinelanders and Mount.

Q. Well, at least he was retained, was he not?

A. That is right.

206 Q. Are you acquainted with a company that was acquired by the name of Dickens Freight Line?

A. Not acquainted with it. You recall to my mind that that was one of them.

Q. Do you know whether Mr. Dickens was still retained as an employee by the management of the Keeshin Company?

A. No; I do not.

Q. Are you acquainted with the company known as Berne Trucks? Are you acquainted with that company?

A. No. As a matter of fact, I am not acquainted with any of the others that you have mentioned.

Q. You stated that the management was not retained, and I wanted to test your knowledge on that.

Do you know that Mr. Berne is still retained by the Keeshin Company in a sort of managerial capacity?

A. No. If I may answer your question this way, Mr. Shields, my knowledge on that particular subject comes from Mr. Keeshin and Mr. Arnstein during the time and after the properties had been acquired.

Q. You also compared the proposal here with what has been done in connection with the consolidation of the Keeshin operations, and you compared it with the Interstate System. Do you know how many pieces of equipment the Interstate owns and operates?

A. Very few.

Q. It is practically a leased operation, is it not?

207 A. That is correct.

Q. Do you know the extent of their social security taxes?

A. No; but I understand that they pay them, whatever they are.

Q. Do you know anything about the extent of them? That was my question.

A. Do you mean the extent—

Q. How much they were, the extent of them.

A. No; I only know they pay them. How much, I have no idea.

Q. You do not look upon the Keeshin system as an operation using leased equipment; do you?

A. No; I do not.

Q. You know nothing about the comparison between the social security taxes of the two companies—Keeshin and Interstate? You know nothing of that?

A. I know it is not a difference of three-quarters of a million dollars a year.

Q. That may be true, but you do not know what the difference is?

A. No; I do not.

Q. I do not know what the relation of three-quarters of a million dollars may be. Will you explain that?

A. That is about what Interstate earned—I mean from the whole picture—they earned in 12 months, ending, I should say, about the middle of last year.

Q. You are speaking of gross or net?

208 A. I am speaking of net. As a matter of fact, I have never had any interest in breaking it down. I know that there are companies in the Interstate set-up, other than the Interstate System, and they own other companies.

Q. Do you know whether or not Interstate maintains any garages for the repair of equipment?

A. As a matter of fact, I know they do not. I know they own and maintain terminals.

Q. That entails a great percentage of overhead cost with any motor carrier. Does it not, the maintenance of equipment?

A. Well, I think the answer, Mr. Shields, is that Interstate's arrangement cannot be totally unsound, or the people who own the trucks would not still be operating under that arrangement.

Q. Well, do you propose to conduct the operations in the set-up here with equipment that would be leased by the Associated Transport or owned by them?

A. They will be owned by the Associated Transport.

Q. And then, to that extent, there is no comparison; is there?

A. Well, I have to answer your question by saying that because I believe that equipment should be owned by the Associated Transport, or by any company, does not necessarily mean that Interstate is wrong, because I do not agree with them.

Q. Well, when all of these certificates are consolidated, if approved by the Commission, it will amount to a great deal of  
209 local service, will it not, in serving intermediate points between terminals?

A. That is correct.

Q. Do you know whether that is the type of service that is being rendered by Interstate?

A. No; I am not acquainted in detail with their service.

Q. Then, the success that you were referring to in connection with Interstate may not necessarily be comparable to the situation that you are proposing here?

A. I do not believe my testimony in that respect has been tendered as I think you think. What I meant to convey is that there is available to shippers east and west, as represented by the service represented by Interstate, and I do not know, as far as the shippers are concerned, whether they care whether Interstate owns them or whether somebody else owns them, if the service is good and the

rates are satisfactory and their relations are good. I mentioned the Keeshin Company, but there are many others that I mentioned. There is Trans-America, and there are many others that can be mentioned. I said that only that Transportation Co. would make available to shippers on the Atlantic Seaboard a service comparable in coverage to the service rendered by east and west companies.

Mr. JOSELOFF. You mean Associated Transport.

The WITNESS. Associated Transport.

By Mr. SHIELDS:

210 Q. Now the Examiner referred to the fact that the Keeshin Company had not had a profit during several years in the past.

Mr. SHIELDS. I wonder if the Examiner had in mind the Consolidated operations of all of the Keeshin Companies, or any one of the three operating companies.

Exam. BAKER. I had in mind the Keeshin system, but I do not believe I stated that they had earned no profit. I trust that counsel will not feel that I intended to reflect upon the Keeshin System at all.

Mr. SHIELDS. No, no, Mr. Examiner.

Exam. BAKER. It was merely from the standpoint of getting a comparison between large companies, that I mentioned the Keeshin Company.

Mr. SHIELDS. That is the only reason I wanted to get it clear in the record. There were certain operating divisions of the Keeshin Company that did make a profit, but the system as a whole has not, and those may be comparable to the proposal that is under consideration here. That was the purpose of my further cross-examination.

The WITNESS. As a matter of fact, Mr. Shields, in the interest of accuracy, I recall this very distinctly: In the comparisons that I made reference to, it was the Keeshin Company and not the Seaboard, because the Seaboard was not included. It was listed further down the line.

211 Exam. BAKER. If you desire to make any statement for the record on that, I will be glad to have you do it, Mr. Shields.

Mr. SHIELDS. No. That is all the questions I have.

Exam. BAKER. The witness is excused.

(Witness excused.)

Mr. COCHRAN. Mr. Horton, will you come to the stand, please.

Exam. BAKER. I think, before starting another witness, we might take a 10-minute recess.

Mr. COCHRAN. I think that is a good idea.

(There was a short recess taken.)

Exam. BAKER. Come to order, please.

Off the record, Mr. Reporter.

(Discussion off the record.)

Exam. BAKER. Back on the record.

Mr. O'BRIEN. Mr. Examiner, at this time I wish to enter an appearance for myself. My name is Thomas P. O'Brien. I am general organizer of the National Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, located here in Washington.

Exam. BAKER. Are you a registered practitioner?

Mr. O'BRIEN. I am not, sir.

Exam. BAKER. You are not a registered practitioner?

Mr. O'BRIEN. No; but I am directly representing our organization. I have appeared in all of these proceedings that have taken place heretofore.

212 Exam. BAKER. Are you an officer of the organization?

Mr. O'BRIEN. I am, sir.

Exam. BAKER. You will be permitted to participate.

Are there any other appearances?

I believe there was a gentleman here yesterday, representing the National Industrial Traffic League. Is he present at this time?

You may proceed, Mr. Cochran.

H. D. HORTON resumed the stand and testified further as follows:

Direct examination by Mr. COCHRAN:

Q. Mr. Horton, while on the witness stand yesterday you stated your position with the Horton Motor Lines and your business experience, and you made some comments as to the development of the Horton Motor Lines from their inception. You stated that you were the operator and sole proprietor for a number of years of Horton Motor Lines, and in addition to the comments you made yesterday—will you please not attempt to repeat, but go ahead and give any other information that you think should be furnished at this time in connection with Horton Motor Lines, its organization, its development, and its present status.

A. I am not sure that what I may say may not to some extent be a repetition of what I said yesterday, because what I did say yesterday was couched in fairly general terms.

213 Q. Mr. Horton, I think you are quite correct. I will ask some questions in detail concerning your operations.

Do you recall now how many terminals Horton Motor Lines has?

A. Nineteen, sir.

Q. Can you tell us where they are located?

A. Yes, sir.

Q. Will you do that, please?

A. In Rome, Ga., Atlanta—

Q. Before you go into that, I think that is set forth in Exhibit E, is it not, of your application?

A. I understand that it is; yes, sir.

Q. All right.

Did you file an application with the Interstate Commerce Commission under the grandfather clause for rights?

A. Yes, sir.

Q. Do you remember the docket number?

A. I will have to—

Q. Was it MC-73943?

A. Yes, sir.

Q. Has that application been passed upon and rights granted, or not?

A. I think, with a minor exception.

Q. Well, Mr. Lawson, who will come on the stand later, will be able to explain that.

214 A. Mr. Lawson will follow for our company, and he can give you more detailed information on that point.

Q. Will you state generally the territorial scope of those rights and the operations of Horton Motor Lines?

A. In general, it covers service for the Atlantic Seaboard territory, New York, Wilkes-Barre, and Pittsburgh in the East; and Rome, Ga., Atlanta, Ga., and Greenville, S. C., and Charlotte and Greensboro, N. C. and the territory immediately surrounding those points.

Q. In the operation of this company, what class of freight, or what classes of freight are transported?

A. General commodities, with the exception of explosives, valuable documents, et cetera—the usual exceptions.

Q. Can you state the number of pieces of equipment now in use by Horton Motor Lines?

A. 720.

Q. Will you separate those into the different units; when you say 720?

A. Well, there are 118 trucks, 285 tractors, 304 semi-trailers, and 13 service trucks.

Q. Is the preponderance of the traffic moving over your lines north or south, or is it more or less equalized?

A. It is fairly well equalized.

Q. In the handling of this traffic, are you now short of terminal facilities, or do you have ample facilities?

215 A. No; we are short of facilities. We are building facilities now in Washington and in Greenville, S. C., but our financial position does not indicate that it would be wise to build at other points where we have not terminals at the moment.

Q. If this application is approved, and as a result of such approval these companies be consolidated, have you any plan formulated that would indicate that there would be changes in the use of your present terminal facilities or those of the other carriers?

A. Yes. If I again gave it, having reference to our Shelby and Hickory warehouses, and to our warehouse in Charlotte, it would be a repetition of the testimony of yesterday; but I have gone into this quite thoroughly with Mr. Barnwell, and we have proposed to do that.

Q. Are there any other changes which you have in mind, or any other facilities which would be improved or done away with that you failed to mention yesterday?

A. I do not know of any that would be done away with. We have a good many improvements in mind. One is the expansion of our facilities in Baltimore, a service garage, and make that available for the Barnwell and Southeastern operations.

Q. Is it the fact that the present terminal facilities of the two or three competing lines in the southern section of the territory, the names of which appear in this application, if used in the  
216 manner in which they are used, or if there was a change in the use of the terminals, bring about a saving in operation?

A. Yes; there will be some savings in operation. The great benefit, however, would be the expediting of the movement of freight, less congestion and less delay.

Q. Generally speaking,—and I think you answered this question yesterday—if this application is approved, will there remain outside of the control of Associated Transport, Inc., common carriers offering service similar to that to Horton Motor Lines, Inc., throughout this territory?

A. Yes; a very considerable amount.

Q. You heard Mr. Seymour's statement, Mr. Horton, in reference to the time saved in the exchange of movement of freight resulting from the consolidation. Can you add anything to that statement, which would illustrate it or make it definite, within your knowledge?

A. I can support his statement as being wholly sound, from my own personal knowledge of the operation of our business. Multiple transfers of freight do produce a very considerable delay, and in the event that all of the transfers of freight are not made before the Sunday holiday starts up, which frequently result in delays for as much as three or four days, the average

delay during the middle of the week, I would say, would be from 12 to 24 hours.

Q. In the making of these transfers on freight moving  
217 from New England into the Deep South, how many hours  
of time could be saved, under your estimation, under certain circumstances?

A. Well, in any very large movement, the hours saved would be actually about 16 to 18 hours; but, in effect, it constitutes a 24-hour faster service, because shippers in the South, particularly, will not receive freight in the afternoon. That is the time they do their shipping, and unless the freight can arrive in their terminal, any pick-up and delivery in the forenoon usually has to be held over until the next day.

Q. Then, as a matter of fact, the time saved by the elimination of transfers would make it possible for you to bring the freight into these places ready for delivery in the early morning, thereby effectuating a saving in time of approximately 24 hours?

A. In many cases it will be 24 hours, and where a Sunday intervenes it will be 48 hours—a Sunday or a holiday.

Q. The saving of time in the delivery of freight is an essential feature resulting in a great benefit to the shipping public; is it?

A. It is. It is a benefit in two ways. It is a great benefit to the operator, himself, to the truck carrier, in that it gives him greater utilization of his equipment, but there is a tremendous benefit to the shipper as well. It is true today, and, in my opinion,

218 it is likely to be true for some time in the future, that  
manufacturers and merchants are not able to maintain complete inventories of merchandise and materials and parts, so that any movement of freight, any freight service that brings to them more quickly the materials and merchandise that they are out of certainly benefits them greatly. I know, from talking with shippers, that they make a very strong point of that. In many cases failure of materials to arrive at a manufacturing plant can cause a complete shut-down for 24 or 48 hours. We have had that happen. We have had manufacturers actually ask us to open up our warehouse to permit them to come and take freight out at 1 or 2 or 3 o'clock in the morning, so that they would not have to shut down their plant, but could keep it running continuously.

Q. Mr. Horton, have you a copy of the application before you?

A. Yes, sir.

Q. Will you turn, please to Exhibit A, Horton Motor Lines?

Mr. JOSELOFF. Here is my copy.

The WITNESS. Thank you.

By Mr. COCHRAN:

That exhibit shows the outstanding stock and the owners of stock of the Horton Motor Lines?

A. It does, sir.

Q. Exhibit B, Mr. Horton, I believe is a blank; is that correct?

A. Yes, sir.

Q. The figures set forth on Exhibit C indicate what?

A. It represents the rates of depreciation that have been  
219 charged by Horton Motor Lines for the years 1936 to 1940, inclusive.

Q. What is Exhibit C?

A. Exhibit C is the balance sheet statement of current assets of Horton Motor Lines, and continue on the second page the current liabilities and the capital structure of Horton Motor Lines.

Q. Exhibit D is a blank, I believe, Mr. Horton?

A. Exhibit D is a blank, sir.

Q. "See attached." That is my mistake. The first page we have—

A. You are correct. Exhibit D is continued.

Q. My mistake.

A. Into an operating statement.

Q. Income statement for the year ending April 30th.

A. Income statement.

Q. On Exhibit E we have the words "see attached." What is Exhibit E?

A. That is an exhibit showing the leases, monthly rental, and date of expiration of all of the terminals, warehouses, and offices of Horton Motor Lines in the prosecution of its business.

Q. I will ask you, Mr. Horton, if there should not be added to that Exhibit E the warehouse or terminal that you are operating at Cumberland, Md.?

220 A. Yes, sir; there should. My recollection of the matter is that we pay some amount, \$10 or \$15 a month, some very small amount. It is a lease.

Q. It is on a month-to-month basis?

A. On a month-to-month basis.

Q. When did you notice that that error was in this exhibit?

A. Last night.

Q. Will you explain Exhibit F, please?

A. Exhibit F is an exhibit indicating that there is an employment contract between Horton Motor Lines and S. W. Shelton of Richmond, Va., on the basis of \$5,400 per year, stipulating that a year's notice is necessary to cancel the contract in force. As I explained yesterday, Mr. Shelton is our public relations counsel, living in Virginia, but operating in North Carolina and South Carolina, Virginia, Maryland, and the District of Columbia.

Q. It is a fact, is it not, Mr. Horton, that he handles generally the legal work in that section for Horton Motor Lines?

A. He does.

Q. Exhibit G shows an insurance schedule in effect April 30, 1941; is that correct?

A. Yes, sir; several insurance schedules.

Q. What kind of insurance is referred to there?

A. That is all types of insurance we carry, both as required under Interstate Commerce Commission rules and regulations and additions thereto, and additional insurance that we carry for our own protection.

Q. I assume that everybody else here knows, but I do not. Will you give me the information? What do the letters "P. L. and P. D." mean?

A. Public liability and property damage. That is generally understood in the trade.

Q. This Exhibit G contains a list of the insurance policies covering the activities of Horton Motor Lines; is that correct?

A. Yes.

Q. Will you now turn to Exhibit H? Have you any explanation to make of that item indicating a claim?

A. It was a claim—

Q. Of Mrs. Stanford.

A. Listed against our company by Mrs. H. J. Stanford, which was closed out by the payment of \$150 by Central Motor Lines as the responsible party. There is no such claim in existence against us now.

Q. Do you recall the date of that payment?

A. I don't recall. It was very recently.

Q. As a matter of fact, it was August 16th?

A. Within the last several days.

Q. Will you turn to Exhibit I and explain the items listed there?

222 A. There is a typographical error listed in Exhibit I, which indicates the amount of our expenses in the operation of our company for the 12 months covered by this exhibit. That is not expected to recur, and after general conferences with all of the heads of the other companies it has been decided that such lists should be made. In writing the head of the first item "Bonuses," \$6,000, that word is used in error. It is not "Bonuses." It is incorrectly described. Those are actually gifts. They constitute gifts made to the Presbyterian Hospital, Red Cross, Boy Scouts, Community Chest, and so forth, in the amount of \$6,000. Then we have this legal expense, and that was an individual item that we paid out for the protection of our interests, by retaining an

attorney in Raleigh, in Washington, and so forth, and that will not recur. It is not expected that such an item will again show in the expense item of Horton Motor Lines.

Salary to H. D. Horton is mentioned, and that is a reduction in my salary from \$74,000 to \$36,000, contemplated under the proposed unification.

Q. Mr. Horton, referring to Exhibit J, you explained yesterday the outstanding preferred stock of the Horton Motor Lines, or you spoke of it, and said it was your intention to retire that stock before closing this contract, if approved. That is correct, is it not?

A. Yes, sir.

223 Q. That is employment stock?

A. Yes, sir.

Q. Sold only to employees?

A. Sold only to employees.

Q. The company has a right to call it upon 30 days' notice at par, plus accumulated dividends; is that right?

A. Yes, sir; as I stated yesterday, dividends have always been paid on a quarterly basis.

Q. And I believe you stated that the stock provides that it can only be sold to employees, and that the dividend will stop immediately upon any employee leaving the company.

A. That is true; yes, sir.

Q. And that any employee leaving the company can immediately have his stock redeemed?

A. It can be redeemed whether he leaves the company or not, on a moment's notice.

Q. The fourth paragraph of Exhibit J refers to a trust agreement under which certain stock of the Horton Motor Lines is being held. Will you explain that?

A. There are in a few instances savings and trust agreements having to do with my estate, and this Exhibit J reads that that trust agreement will be canceled. It has already been canceled, and the stock that is held in the trust agreement is now in my hands in Charlotte.

224 Q. There is also a reference in that paragraph to the policy or policies of insurance which were part of that trust.

A. Those policies of insurance will be taken over by me by payment to the company of their cash value.

Q. Has that been done?

A. It has not been done, but can be done on a moment's notice.

Q. Following that on Exhibit J there is a restrictive agreement, which was referred to yesterday in your testimony, and following that is the main agreement with the Conger Realty Company. Is that correct?

A. Yes, sir.

Q. Turn to the exhibit under the Conger Realty Company, please. Have you that?

A. Exhibit A of Conger?

Q. Yes, sir.

A. Yes.

Q. Exhibit A shows the outstanding capital stock of the Conger Realty Company. It further shows that you are the beneficial owner of all of the stock; is that correct?

A. That is true.

Q. Exhibit C is the balance sheet as at the close of business on April 30, 1941.

A. Exhibit B shows no exceptions to it, and then Exhibit C shows the rate of depreciation used by that company for the years 1939 and 1940.

Q. What does that statement that you just made—Exhibit what?

225 A. I said Exhibit C shows the rates of depreciation on the property owned by Conger Realty Company for the years 1939 and 1940. That is Exhibit C as is shown here. Also there is attached the balance sheet, which is shown on the second page of Exhibit C. That shows the assets, liabilities, and capital structure and net worth of the Conger Realty Company.

Q. Exhibit D?

A. Exhibit D is an income statement of the Conger Realty Company for the year ending April 30, 1941.

Q. Exhibit E?

A. Exhibit E is an exhibit showing the properties of Conger Realty Company, to whom leased, the monthly rental, and the expiration date.

Q. I believe it also shows the amount still due to the American Trust Company on outstanding indebtedness; is that right?

A. Not on this particular exhibit.

Q. The balance due—

A. Yes; it does on the bottom.

Q. That item of indebtedness is an outstanding lien against all those properties; is it not?

A. No; only part of them. Two of the warehouses are not covered by any bonded indebtedness.

Q. The asterisk or star indicates which one?

A. Yes.

Q. Will you explain Exhibit E please?

226 A. Do what?

Q. Exhibit E.

A. Exhibit E is an exhibit showing a lease to Brown Equipment Company, the terms of the lease, and the expiration date.

Q. Exhibit F is blank.

A. Exhibit F is blank, sir.

Q. Exhibit G?

A. Is the coverage of insurance of Conger Realty Company and its properties.

Q. Exhibit H.

A. Exhibit H indicates that there are no actions that are not covered by insurance against the Conger Realty Company.

Q. Exhibit I, blank.

A. It shows that there are no nonrecurring items in the expenses of Conger Realty Company.

Q. Will you turn to Exhibit A of Brown Equipment & Manufacturing Company, towards the latter part of the book, Mr. Horton?

Exam. BAKER. Mr. Cochran, I might suggest that since the application is a part of the record, unless you wish particularly to refer to something that is not self-explanatory, it is not necessary to go over that exhibit, or each exhibit, and explain it.

The WITNESS. I have it right here, now.

Mr. COCHRAN. That is a very good suggestion. Thank you.

By Mr. COCHRAN:

Q. Will you turn to Exhibit I, Mr. Horton?

227 A. Yes, sir.

Q. What does that exhibit refer to?

A. That exhibit shows a nonrecurring item in the amount of \$2,000 for an item that would not recur, which was the cost of the production of the die used in the casting of a marker light that the Brown Equipment & Manufacturing Company sells all over the United States. Once the die has been produced, there is no reason why it should again be reproduced; so that is considered a non-recurring item.

Q. That company has no transit operation whatsoever?

A. No, sir.

Q. You have no connection with rail or steamship companies?

A. No, sir.

Q. Horton Motor Lines is not affiliated with any rail or steamship company?

A. No, sir.

Mr. COCHRAN. That is all.

Exam. BAKER. Is there any cross-examination?

Cross-examination by Mr. WIFRUD:

Q. Mr. Horton, in reference to the Brown Equipment & Manufacturing Company, does the record disclose the volume of sales of that company during the past several years? I do not seem to find it in the exhibit.

A. The records of the company do; yes, sir.

Q. Well, is that record here?

228 A. I do not think it is required for previous years. Yes; it is, too.

Mr. JOSELOFF. Look at Exhibit B-6.

The WITNESS. You have to show a certain number of years. I am not sure that we have shown in this exhibit all the years of existence of the Brown Company.

By Mr. WIPRUD:

Q. I had in mind just the last several years. What years are shown in the exhibit?

A. This shows 1939, 1940, and the period ending April 30, 1941.

Q. What exhibit number is that?

A. This is B-6 continued; one of these long sheets. It is a group of long sheets.

Q. Does the record likewise show, Mr. Horton, the amount of such sales as have been made by the Brown Company to the Horton Motor Lines, Inc.?

A. I don't understand the question. I am sorry.

Mr. WIPRUD. Will you read the question, Mr. Reporter.

(Question read.)

A. Not in this record. Their sales to Horton are included in their sales to everyone else.

Q. Could you supply that information for the record?

A. Yes, sir.

Q. For the past several years.

A. Yes, sir.

229 Mr. WIPRUD. Thank you. That is all I have.

The WITNESS. It will take three or four days to get it, sir.

Mr. WIPRUD. That is all right, sir.

It will be included in the record?

The WITNESS. Yes; it can be developed before the hearing is closed.

Mr. WIPRUD. Thank you.

Exam. BAKER. Is there any further cross-examination?

Will Mr. Lawson testify in more detail with respect to the remaining competition?

The WITNESS. Yes, sir.

Mr. COCHRAN. Yes. We will have such an item as you refer to, and when he is on the stand we will introduce it as an exhibit, and that will bring out those matters in detail.

Exam. BAKER. Mr. Horton, perhaps you can better answer this question: What are your three principal competitors at the present time?

**The WITNESS.** Mr. Examiner, unless you indicate the territory, I could not answer that.

For instance, between here and Washington, the principal competitors are Davidson, Baltimore Transfer, and Cowan.

**Exam. BAKER.** Between here and what?

**The WITNESS.** Between Baltimore and Washington.

**Mr. JOSELOFF.** What do you mean by "here"?

230 **The WITNESS.** I mean New York and Baltimore and Washington—between New York and Baltimore and Washington, there are Davidson, Baltimore Transfer, and Cowan, three very large trucking operations: Between New York and Philadelphia, on the one hand, and Richmond and that territory on the other, the main competition is also Baltimore Transfer, Brooks Transportation, East Coast, and many others that I don't recall the names of now. In the territory principally between New York and Philadelphia, on the one hand, and the Carolinas on the other hand, it is Harris Motor Lines, Davis Motor Lines, Akers, Hutchinsoff, Brooks Transportation—

**Exam. BAKER.** I neglected to also include any companies that may be involved in this application. How would you rate Barnwell?

**The WITNESS.** Well, I left Barnwell out. Barnwell is in competition primarily between New York and Philadelphia, and the Carolinas also. He would only come in the last group that I have named.

**Exam. BAKER.** Would you say he would be one of the three principal competitors as far as that particular traffic is concerned?

**The WITNESS.** Yes, sir. In the territory south of the Carolinas, in the Georgia territory, there would be Hall, Akers, and Miller.

They would be the three. Barnwell is not running to Atlanta, and would not come in that group—Mason and Dixon—all substantial carriers.

**Exam. BAKER.** Those are all the questions I have at this time. The witness is excused.

(Witness excused.)

231 **Mr. COCHRAN.** Mr. Examiner, we have the secretary and treasurer of Horton Motor Lines here, who is in charge directly of the accounting and bookkeeping. He is available as a witness, if it is desired.

**Exam. BAKER.** The Examiner has no questions of that witness, unless there is something that you would like to develop.

**Mr. COCHRAN.** No.

**Exam. BAKER.** If so, you are at liberty to put him on.

**Mr. COCHRAN.** No. Thank you. We feel that the information is contained in the application.

Mr. Examiner, at this point, Mr. Joseloff will examine Mr. Clay, of Transportation. Immediately after lunch I hope to put Mr. LAWSON on. He has an exhibit prepared showing the competition, and he will be here this afternoon.

Exam. BAKER. Very well.

ALEXANDER STEPHENS CLAY, being first duly sworn, testified as follows:

Direct examination by Mr. JOSELOFF:

Q. Give your name and address to the Reporter, Mr. Clay.

A. Steve Clay, 1045 Hurt Building, Atlanta, Ga.

Exam. BAKER. Will you state your full name, please?

The WITNESS. Oh, yes. My full name is Alexander Stephens Clay.

232

By Mr. JOSELOFF:

Q. What are your position and duties with Transportation, Inc.?

A. I am now serving as president of Transportation, Inc., and also as its counsel.

Q. And as such do you have general charge of the affairs of Transportation?

A. Yes, sir.

Q. Will you state for the record the exact date of the incorporation of Transportation?

A. Transportation, Inc., was actually organized in March 1940. The exact date I do not seem to have, but it is in the record.

Q. If I were to refresh your recollection, would you state whether or not the date of August 3, 1939, is the correct date?

A. That is the date that the charter was secured. The consolidation of the two companies, or the reorganization of the two companies which form Transportation, Inc., was not completed until March of the following year.

Q. Going back, will you state briefly the history and development of Transportation to its present position.

A. Yes, sir. Transportation, Inc., a Georgia corporation, and the corporation now in operation, consists of two companies which had operated prior to that time, one in what we term "the

233 northern division" of our operation, which is in the States of North Carolina, South Carolina, and Tennessee, and in Georgia to Atlanta. That company was operated under the same name, but was a corporation of a different State—North Carolina, I believe. It was organized, I believe, in about 1933. It continued operations up until about 1937, when it became financially embarrassed to the point that it was deemed advisable by the corpora-

tion and its creditors to take some action to preserve the franchises, and a receivership took place. The company continued operating under the receivership for some several months. The receivership was dissolved, and a new corporation organized—another North Carolina corporation, I believe, of the same name, Transportation, Inc.

The southern end, which is from Atlanta south through Georgia, and then into Alabama, along the route to Montgomery, Ala., to Mobile, with an off-route point to Pensacola, through Mississippi and New Orleans, La., is, with the exception of the off-route point, the old operation of the Montgomery & Atlanta Motor Freight Lines.

This company, too, had a bad financial experience, and its creditors finally found it necessary to take it over, and it was made a part of the same organization.

The stockholders of the present corporation are creditors of both, or were creditors of both; and are now, in substantial amounts of both of these predecessor corporations.

234 Q. When you say the stockholders of the present corporation, does it not, that the stock is held entirely in your name as trustee?

A. Yes; it is.

Q. And when you refer to them as stockholders, you refer to them as beneficial stockholders?

A. Yes.

Q. You have, have you not, full power and authority as trustee to enter into these proposed transactions?

A. Yes, sir; I have. That has been provided in writing.

Q. And it is, with the knowledge and consent of the so-called beneficial stockholders?

A. That is correct.

Q. Have there been any amendments to the charter of Transportation, Inc., since the date of the hearings mentioned by the Examiner in Docket No. MC-F-1223, 1244, and 1264, which hearing took place in Washington beginning on July 15, 1940?

A. There have been done.

Q. And what is the present nature of the business conducted by Transportation?

A. It is a motor common carrier transporting over regular routes commodities generally.

Q. And would you state generally, in a sentence or two, the territory served by Transportation?

235 A. Yes. From Greensboro, N. C., to Charlotte, N. C., Greenville, S. C., to Atlanta, Ga., with a route into the West, over to Asheville, and from there to Knoxville, and

then another off-route point to Bristol, Va., as indicated on the map. South of Atlanta, from Atlanta to Montgomery, Ala., to Mobile, Ala., to New Orleans, with two off-route points, one to Pensacola, Fla., and another to Andalusia, Ala.

Exam. BAKER. Mr. Clay, by "off-route points," do you mean that you can serve no intermediate points between, for instance, Pensacola and regular route, or do you have a regular route off of your main operation to Pensacola?

The WITNESS. Well, it is the regular route off our main operation to Pensacola, and it so happens that we are not permitted to serve intermediate points. We go into Pensacola two ways. We go from Mobile to Pensacola. We are not permitted to serve intermediate points. We go from Flomaton, Ala., to Pensacola. We are permitted to serve intermediate points, but there are no points of any size between.

Exam. BAKER. It is not actually an off-route point, though, is it?

The WITNESS. You are correct. It is not.

Exam. BAKER. The same is true of Bristol; you have a regular route going to Bristol?

The WITNESS. That is true.

Exam. BAKER. I just wanted to clarify that.

The WITNESS. Well, I am glad you did that, because I  
236 used the wrong term.

By Mr. JOSELOFF:

Q. In any event, a more particular description of the territory served by Transportation, Inc., is included in the record on file with the Interstate Commerce Commission?

A. Yes, sir; it is.

Q. Do you happen to have the docket number of its rights?

A. Yes. Most of our rights are included under Docket MC-52692, and there are nine subdivisions of that docket. Then, our rights from Mobile, Ala., to New Orleans are still contained under Docket No. MC-63090. Certificates have only been granted with regard to subdivisions 1 and 5 of MC-52692, but in all instances where we are now operating we have received final compliance orders and have complied.

Q. And all of those operations are common carrier operations?

A. Yes, sir.

Q. Does Transportation, Inc., have any intrastate rights?

A. Yes; we have intrastate rights in Alabama, in Tennessee, and in North Carolina, and in every instance those intrastate rights are parallel to interstate operations, with the exception of a route from Knoxville to the North Carolina, via Dandridge and Newport, Tenn.

Q. How does the intrastate business compare with the interstate business of Transportation, Inc.?

A. About 7 percent is intrastate of the gross.

237 Q. Have you available tonnage figures for Transportation, Inc., for the year 1940 and the first six months of 1941?

A. Yes, sir. During the year 1940 we handled a gross of 263,000,000 pounds, or slightly in excess of that. During the first six months of 1941 we handled 171,000,000 pounds. I might add in that connection that it has been our experience that we have heavier tonnage during the last six months' period of a year; so I would anticipate that our tonnage for the year 1941 would be in the neighborhood of 400,000,000 pounds as compared with 263,000,000 pounds in 1940.

Q. Of this tonnage, how much is so-called interchange freight; that is to say, freight originating in the territory served by Transportation, Inc., for points beyond its lines, or vice versa?

A. I would estimate 55 percent of it.

Q. And where are the principal interchange points?

A. I would say that our principal interchange points are at Atlanta—that is, Charlotte, Greenville, Montgomery, New Orleans, and Knoxville.

Q. Now, do you see any benefit in the proposed transaction, insofar as the movement of its interchange freight is concerned?

A. Yes.

Q. So far as time in transit is concerned on shipments going out of your territory or coming into it?

238. A. Why, yes. I think it would be most beneficial from the standpoint of our company to eliminate interchange on that tremendous volume of freight which moves from southern points along the Atlantic Seaboard to points beyond our northern terminus, and that perhaps still larger volume which we have been handling which we receive from points north of our northern terminus, on the Atlantic Seaboard.

Q. What do you estimate would be the saving in time?

A. Well, I think it means that we would then be able to provide what our shippers have signified they wish, say, from Atlanta. That is second morning delivery in New York, which we are not able to give them at the present time, or we cannot assure them of it, anyhow.

Q. Do you have shipments moving to and from New England, as well as New York?

A. Yes. You see, there are a great many textile mills located in our territory. Then, of course, there are many more located in this New England territory.

We have this sort of a situation: In some instances, textile mills are established for providing the first process, and then they move on to an affiliate mill in New England for further processing. We have a very substantial amount of freight moving to and from the New England textile centers.

Exam. BAKER. To what points does that freight move in your territory, Mr. Clay?

239 The WITNESS. In our territory we have mills located in the neighborhood of Atlanta; others at Gainesville, Ga., and still others between Montgomery and Mobile, Ala.; also between Atlanta and Montgomery and in the neighborhood of La Grange, Ga., West Point, Ga., and Lanett, Ala.

By Mr. JOSELOFF:

Q. What can you tell us about the present load factor of Transportation, Inc.?

A. Well, we have restrictive wage laws in several of the States in which we operate. For example, in Alabama and in Tennessee, we are limited by law to a 15,000-pound pay load. We find the load factor to be 73 percent. Where we are not restricted it is fixed at 25,000 pounds because of the size of our equipment, and our load factor there has been about 76 percent capacity.

Q. Now, do you see room for improvement in that load factor which would result from the proposed unification?

A. Yes; I certainly think so. We are convinced that that will be the case.

Q. A list of terminals operated by Transportation, Inc., is set forth in Exhibit E in the application, is it not?

A. Yes.

Q. Will you please state for the record your opinion as to the adequacy of these terminals, as presently constituted, and what might be done or should be done in the way of improvement?

240 A. As I testified on the Transport hearing, that has been a major problem in our operations always. Since I last testified, with the exception of our terminal at Charlotte, N. C., I do not believe that condition has been improved.

Exam. BAKER. Mr. Clay, you recognize that the record in the other proceeding is not a part of this proceeding, and it will be necessary for you to offer anything here that you want in this record.

The WITNESS. Yes; I will do that. We do not have adequate terminal facilities at any place over the entire system, with the exception of Charlotte, N. C., and Greenville, S. C. They were not adequate more than a year ago. They were not adequate in

1940, and, of course, with the increased tonnage, they have become more of a problem than ever before.

By Mr. JOSELOFF:

Q. Has your company been in a position to develop or improve these terminals, since you say they have not been adequate for the past year or so?

A. No, sir. Obviously, we have not been, when you see our earnings statements. We have this problem, Mr. Joseloff. There are no buildings available at these places which are suitable for our purposes, and we have no money of our own with which to build terminals—none that is available for that purpose, and we are unable to make the construction of a terminal by some outside person attractive because of our lack of adequate capital, working capital.

241 Q. Is it not a fact that you have tried to influence outside capital to construct a terminal for your company, and that they are willing to do so, but that they are unwilling to run the risk of the financial investment because of the condition of Transportation, Inc., financially?

A. Yes. We are faced with that situation at more than one place, and just recently our Mobile terminal was so inadequate, and we figured that at Mobile and Atlanta and at some of these other points we are losing thousands of dollars because we cannot handle the freight properly, and we cannot move it faster. The Mobile situation became so bad that although we recognized it would be difficult to attract someone, we still undertook to do it, and we have our plans already drawn. We have people who are ready to go ahead, but we cannot move until we are in a position to assure them of our ability and that we are provided with sufficient working capital.

Q. Do you therefore see, as one of the tremendous benefits to Transportation, Inc., of the proposed unification, a much needed improvement in your terminal facilities throughout practically your entire system?

A. Yes; if I had the one thing that I believe to be more beneficial than anything else, it would be to provide us with an adequate place to work in and handle our freight.

Q. In regard to maintenance of equipment, will you explain the maintenance set-up of Transportation, Inc., with reference  
242 particularly to its present adequacy and need for improvement?

A. Well, just as we will have a building that is not designed—and this is the general situation—as a terminal, we will be in the same position in regard to the mechanical shops. We undertook to maintain shops at various points, but the working conditions

there are such that you really have no right to expect an efficient performance. For example, in Mobile last year it was necessary that our mechanics there work in the mud all the year. They had no floor. And the same thing is true in Atlanta. We have no place for them to work, and it makes it difficult to keep skilled mechanics. We have good ones but we cannot expect a man to want to do a job in that sort of place, if he can find another place that is more suitable, even though the compensation might be the same.

Q. Do you have a lot of repair work done at the present time by outside repair shops?

A. Much too much, because of that situation.

Q. State whether or not you feel that periodical inspections of your fleet would be quite helpful in maintenance.

A. Yes; I do, and, of course, at the present time we are not in position to provide that.

Q. Now, state whether or not the insurance coverage by Transportation, Inc., is, in your opinion, adequate and above the requirements set forth by the Interstate Commerce Commission?

A. Yes, I think so. Would you like for me to go into that  
243 question somewhat?

Q. No. I think unless the Examiner wishes it, a general statement to that effect in the record is all I care for. Does the Examiner care for it?

Exam. BAKER: I think he has answered sufficiently.

By Mr. JOSELOFF:

Q. Now, Mr. Clay, from the standpoint of competition, do you see any effect of any nature on competition by the inclusion of Transportation, Inc., in the proposed unification?

A. None whatsoever. There are, of course, some instances where north of Atlanta—and north of Atlanta only—our operations parallel some of the companies that are parties to this application, or that will become parties of the proposed unification, but in every instance where that occurs strong competition remains, and not ever by more than one carrier that is well established and doing a substantial volume of business.

Q. For the record, it is my understanding, and I believe it is yours, Mr. Clay, that a more detailed statement of competition where Transportation, Inc., does compete with any one or more members of the proposed unification will be submitted by another witness?

A. Yes; that is so.

Q. The witness referred to by Mr. Cochran.

A. Yes.

Q. If I understand you correctly, then, the vast majority  
244 of the territory served by Transportation, Inc., is not at

all competitive with any of the other companies in the proposed unification?

A. That is true.

Q. Except for some small instances north of Atlanta.

A. That is true.

Q. Now; could you tell us also your estimate as to how much of the business of Transportation, Inc., is involved in that small segment to which I have just referred?

A. Well, of course, at one point there is a substantial part of our volume, and I believe it is only at that one point it moves. Horton and ourselves compete from Charlotte to Atlanta.

Q. But what I had in mind was in comparison with your total amount of business, the business done by Transportation, Inc., how does that volume stand up?

A. I would be afraid to hazard a statement about that, Mr. Joseloff. It would just be a guess on my part, but I would say that the greater part, of course, would not be affected.

Q. Would you say it would be less than 25 percent, or do you think that would be conservative?

A. Yes; I can certainly say that; yes.

Q. Now, Mr. Clay, you have been here while Mr. Horton testified and while Mr. Seymour testified, today and yesterday.

A. Yes.

245 Q. And you listened to all of their testimony and are acquainted with what was said, particularly with reference to the benefits to be derived from the proposed unification, to the public, the shippers, and the companies.

A. Yes, sir.

Q. I will ask you whether or not you are in accord with the statements that they have made?

A. Yes; I most certainly am.

Q. And for fear of making the record repetitious and having you simply repeat in your own words what was said by these other two witnesses, I will ask you to kindly state for the record whether there are any additional factors which you would like to comment on at this time—factors in addition to what were stated by the other witnesses.

A. Well, there are no general factors that I could add, of course, but I believe that the benefits they have pointed out would all apply insofar as my own line is concerned, and then, of course, we have difficulties which are peculiar to ourselves, and I have undertaken to suggest some of those difficulties, which will be cleared up if this company is permitted to become a part of this unification.

Q. In general terms, then, do you see a general improvement in the service and a more economical operation resulting from the

proposed unification, insofar as it affects the lines of Transportation, Inc.?

246 A. Absolutely. It will provide something that we have been handicapped without for a long time. It will provide us with an adequate working capital.

Q. While we are on that subject, which, I take it, deals with the financial set-up of Transportation, Inc.—

A. Yes.

Q. Could you state how much additional cash or working capital would be needed for Transportation, Inc.?

A. Well, this company operates over this vast territory that I outlined. We are handling what I would estimate to be 400 million pounds of freight annually, and we have more than 550 employees. I would say that a hundred thousand dollars would provide an adequate working capital.

Q. Now, in addition to that amount which, as I understand you correctly, would be in the corporate set-up as working capital, is there need at the present time for additional cash in the Transportation, Inc., set-up to facilitate or ease up its present financial condition?

A. Yes. Our statement clearly shows that there are a great many liabilities that the company has that should be paid, and ought to be paid immediately. It is all short term.

Q. Now, if that were done would that improve not only the condition of Transportation, Inc., but its ability to serve its customers and its dealings generally with the public?

247 A. Oh, yes. It would improve the company in every respect. It would provide confidence insofar as the public is concerned. It would improve the morale of the personnel of the organization, and it would make our creditors very happy.

Q. Well, I wish you would comment a bit on the improvement in the situation as to the morale of your organization. Do you have any specific incidents in mind wherein that situation would be improved?

A. Yes. We have a great many people connected with our organization who have been with us many years, and then, of course, there is a certain percentage of your personnel that turns over rather rapidly. Regardless of who they are, whether they are truck drivers or mechanics, or whoever they may be, they pretty well sense a situation. They know that there has been this condition there, these debts that were, for the most part, accumulated during the depression years and during the final stages of the development of this industry. They know that they are there, and it unconsciously affects them in their work. They do not have a

sense of security. As a result they frequently leave us and go to other places, not for more money, but simply because they feel that their futures are more likely to be provided for at those other places. It would, of course, clear that up immediately.

Q. What is your best estimate as to the additional case that would be needed to straighten out the financial picture of Transportation, Inc?

248 A. Well, when I referred a few minutes ago to a hundred thousand dollars, I meant a hundred thousand dollars working capital in addition to the discharge of current liabilities. I do not have the statements before me, but whatever the accumulated liabilities are—and I believe all the liabilities are current—they, of course, should be paid.

Q. I think, if you will refer to Exhibit B-2 of the application, you will find it there.

A. These total current liabilities are shown to be in the amount of \$336,465.14, as of April 30, 1941. Of course, some of that is items that you will always have. Of course, you will always have a certain amount that would be due on interchange and current taxes, but I would, from just glancing at the statement, think that there is about \$250,000 there that is needed to get the company's current position right.

Q. Then, in connection with that factor, will you please turn to Exhibit J of Transportation, Inc., contract, and explain for the record the rationale in the determination of 5,500 shares of stock of Associated Transport exchanged for the stock of Transportation, Inc.?

A. Yes. Well, obviously, Mr. Joseloff, if we had followed the formula that was agreed upon by the other participants, the stockholders of this company would have realized nothing whatsoever. I do not think that would have been a just result, and I think the other members of this group did not feel that  
249 it would be a just result, because I think that we have brought this company through the most difficult stage; we have developed it, and we have struggled along here with it to a situation where, if we were provided with an adequate working capital I think it would begin to show a profitable experience immediately. It serves a very important part of the nation, and one that is developing quite rapidly. I suppose that most of the factories, aside from those that have been built just because of the existing emergency, of all kinds, are being established in the Southeast, and in that territory that we serve below Atlanta we have a great building program, which has been going on down there for the last few years, and pointing to a much greater one in the future. So when Mr. Moore discussed this matter

with these gentlemen they simply arbitrarily arrived at this figure, because they had no formula to follow; but I certainly think with those franchises which we have developed and the good will that has been developed, in spite of the financial condition of the company, we have been able to render a service that is badly needed in this territory, and we have struggled along with it somehow.

Q. What is your opinion with regard to the profit possibilities of Transportation, if it got the needed financial assistance? Have you any idea as to what would happen to profits as a result?

A. Well, no; I would not undertake to say what it would be.

250 Q. You understand, Mr. Joseloff, I am not experienced in the motor carrier business. At the present time I am undertaking to engage in the general practice of law. That is my profession. But from my own experience and from consulting members of this group and other members of the industry, I know of no reason why, if this company was really provided with this thing that it needs so badly, it should earn a profit in the neighborhood of \$10,000 a month before, of course, deducting taxes, and I should say that the possibilities for the future are unlimited.

Q. What do you estimate your gross volume of business in dollars would be for 1941?

A. \$2,000,000.

Q. Now, with reference to Exhibit J, regarding the extension of debts of Transportation, Inc., in the amount of \$5,000 or more, I ask you whether or not that has been complied with.

A. Yes; it has been complied with. Mr. Wiley Moore is on excellent terms with all those companies, and we had no difficulty whatsoever in securing that arrangement.

Exam. BAKER. Could you identify Mr. Moore? Is he the principal beneficial stockholder of Transportation, Inc.?

The WITNESS. No, sir. It is not exactly that arrangement. He is just as interested as if he owned the stock, because the greater  
251 portion of the stock of the company actually belong to his children, in that it belongs to Moore, Inc., and the sole stockholders of the corporation are Mr. Moore's children.

Exam. BAKER. Thank you.

By Mr. JOSELOFF:

Q. Referring to Exhibit H, Mr. Clay, would you state first whether or not those suits are covered by insurance?

A. No, sir; none are covered by insurance that are there listed.

Q. Will you explain what their present status is?

A. Yes, sir. The first one, Caldwell & Carnathan v. Transportation, Inc., arises because of an alleged violation of the Fair Labor Standards Act. It is a suit to recover wages. The amount of the suit, including penalties and everything, is \$1,737.19. We do not feel that there is any liability in this case, because our records were investigated by a representative of this department, and he took no exception to our position whatsoever, and did not include it in his recommendation. He found that in some instances the company had inadvertently, according to his position, violated the Act. Barker v. Pitman and Transportation, Inc., arises in this way: We bought, or we entered into a contract to buy rights which we thought belonged to J. A. Pitman. It later developed that he had no rights as between these points, but there is some question as to whether we are indebted to him in an amount of money. This man Barker is one of the creditors and  
 252 is undertaking to reach him if it is determined that we owe Pitman anything. Those are the only ones listed here.

Q. How much is involved?

A. Well, the maximum amount which could be involved would be \$2,000, but in no event do I think that our liability could exceed a thousand dollars.

Q. Do you say anything with regard to simplification of relations with public regulatory bodies that would result from the proposed unification?

A. Oh, yes; of course. We find it most difficult, because of our handicaps, naturally, to provide proper facilities for keeping up with that sort of thing. The small operator has not the organization to provide facilities necessary for even ascertaining what the laws, much less with providing means for compliance with them, and I think we would be in a much better position to comply and really provide a service to the regulatory bodies in that respect. I think it is at present recognized that most of these regulations do have a benefit on the industry, and I think it would materially assist the regulatory body.

Mr. JOSELOFF. I have no further questions.

Exam. BAKER. We will recess for lunch until 1:45 o'clock p. m.

(Whereupon, at 12:30 o'clock p. m., a recess was taken until 1:35 o'clock p. m. of the same day.)

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AFTERNOON SESSION 1:45 P. M.

Exam. BAKER. Come to order, please. Mr. Joseloff, did you have any additional questions?

Mr. JOSELOFF. I have no further questions of Mr. Clay. Thank you.

Exam. BAKER Cross-examination?

Mr. WIPRUD. Well, after you, Mr. Examiner, if I may. I may cover the points you have in mind.

Exam. BAKER. I would prefer you to go first.

ALEXANDER STEVENS CLAY, resumed the stand and testified further as follows:

Cross-examination by Mr. WIPRUD:

Q. Mr. Clay, does there exist substantial competition between your lines and the Horton Company, one of the companies in this proposed unification, north of Atlanta?

A. Yes, sir; from Atlanta to Charlotte; Atlanta, Georgia, to Charlotte, North Carolina. I don't know whether it is competition for him, but we have a substantial movement of freight.

Q. Well, there is substantial competition between both of them?

A. Yes, sir.

Q. What is your competition south of Atlanta?

A. South—

254 Q. To New Orleans, I mean to say?

A. South of Atlanta to New Orleans the Dixie Freight Lines of Atlanta, Georgia, is our sole competitor to Montgomery. The Motor Terminal & Transportation Company is our sole competitor from Montgomery to Mobile. We have no competition into Pensacola from Flomaton, Alabama. We have competition into Mobile from—I mean into Pensacola from Mobile, Alabama. That is the Union Express Company. As between Mobile and New Orleans our competitors are: Herrin, Mobile Express Company, Acme Fast Freight Lines, and, I believe, McDonough Express. I might add in that connection that that is a rather sparsely populated territory, and, while other carriers have served us between those points we have finally gotten down to the limited competition that I have outlined to you.

Mr. JOSELOFF. Doesn't the Acme Freight Line go on down south from Atlanta over—

The WITNESS. Yes; they really compete with us from—they compete with us from Atlanta to New Orleans, but they do not compete with us to most of the intermediate points because they go in a different direction.

Mr. JOSELOFF. But they serve the same points?

The WITNESS. Oh, yes; they serve New Orleans from Atlanta just as we do. They also serve Mobile from Atlanta just as we do, but they get there from a different direction and only directly compete with us from Mobile to New Orleans. That—

255 or, rather, they parallel our lines from those points.

By Mr. WIPRUD:

Q. Would the merger of Horton Lines and the Transportation place the Associated in a dominant position, insofar as competition is concerned north of Atlanta in the area now operated by Transportation?

A. In my opinion, absolutely not. There are at least three or four other carriers who are capable of and are providing very substantial competition as between those points. Their tonnage is substantially greater than ours as between those points, I imagine. I don't know that to be true, but that would be my opinion.

Q. Will they operate a through service such as proposed by Associated?

A. Yes. Yes; many of them did a through service as between Atlanta and Charlotte.

Q. As between Atlanta and Charlotte?

A. Yes.

Q. Well, now—

A. And north of there. Many of them go right on up into the—into New York.

Q. Well, you say, "many of them." How many?

A. Well, Mr. Horton—I mean Mr. Lawson who will follow me can give you that in detail, and rather than to undertake to do it without preparation, I think it would be better for you to get it from him because then I know that it would be  
256 accurate. I am sure I would miss some of it.

Mr. JOSELOFF. I might state for the record and to assist you, sir, that we have got a detailed exhibit showing the competition between those points, and I think it will come out much better from that witness and he can give you the information you desire.

Mr. WIPRUD. All right, sir. Just one additional question, Mr. Clay.

By Mr. WIPRUD:

Q. In your opinion, would it be feasible to operate a truck from New Orleans to New York without interchange?

A. My own opinion is, since I am not experienced in this particular type of business to any particular degree, it is worth just that. My own opinion is that it will be feasible if—certainly if you can switch tractors and carry it on up that way, and that would probably require some reciprocal agreement with regard to license tags. But it would certainly, it seems to me be feasible in that respect because it would eliminate handling the loading and unloading of trucks. That takes time and that is where most of your losses occur.

Q. In other words, it would be the tractor that would go through?

A. Yes—the trailer.

Q. The trailer that would go through and not the tractor?

A. Yes, sir.

257. Q. Would weight restrictions in the various states have any effect upon that theory?

A. Yes; it is conceivable that it would have a very substantial effect on it because whether it would be practical or not to take a smaller load, as we are permitted in the State of Alabama, for example, up in states where you are permitted a much greater load, I doubt that it would be practical unless you could assume that those laws would eventually be made uniform, or that those restrictions would be more reasonable. There have been substantial modifications in the Alabama laws already. They have raised that limit, but I still don't think that it is enough.

Mr. WIPRUD. I understand, Mr. Examiner, that there will be another witness on on the question of elimination of competition. That is all I have of this witness.

Exam. BAKER. I might state that even though there will be a witness to present in exhibit form remaining competition, it might be well to develop the question from this witness on oral testimony, so far as he knows, since undoubtedly he is more familiar with his own competition than Mr. Lawson will be.

Mr. WIPRUD. I understand this witness is not an operator.

The WITNESS. I know my competition south, but he knows it north better than I do because it is his competition too.

Mr. JOSELOFF. Well, isn't this situation, Mr. Examiner, that from Atlanta south there is no effect on competition  
258 insofar as members of the proposed unification are concerned because Transportation does not in any way, shape, or manner compete with any of the carriers in this proceeding south of Atlanta? That leaves us, then, with the situation north of Atlanta which is served not only by Transportation but by Horton Motor Lines; and the Horton Motor Lines have a witness who has developed that phase of it, so that there will just be a duplication of testimony on competition from Atlanta north because both the companies operate and both know the operations north of Atlanta.

Exam. BAKER. That no doubt is true to a large extent, although it may be that different ones have different competitors so far as the importance to them is concerned.

Mr. JOSELOFF. Well; I could develop from this witness by a question or two just what the nature of the competition is between Atlanta and the north, say, Atlanta and Charlotte, if you would care to have that for the record.

Exam. BAKER. I would say it would be well to develop from this witness remaining competition so far as there is any duplication between the routes of Transportation and the other carriers involved in this proceeding.

Mr. JOSELOFF. May I ask the witness a question, then?

Exam. BAKER. Yes.

By Mr. JOSELOFF:

259 Q. Mr. Clay, I ask you to refresh your recollection with this document which I hand you which is a report on carriers competing with Transportation north of Atlanta, between Atlanta and Charlotte, and with that—with your recollection refreshed from that document, will you please state for the record carriers north of Atlanta between Atlanta and Charlotte competing with Transportation?

A. Our principal competitors as between Atlanta and Charlotte are Akers Motor Lines, Inc.; Lewis & Holmes Freight Corporation, and Miller Motor Express; New South Express Lines, Inc., Roadway Express, Inc., and W. H. Tompkins also compete with us as between those points.

Mr. WIPRUD. This is Atlanta and Charlotte?

The WITNESS. Yes, sir.

By Mr. JOSELOFF:

Q. Now from your—

A. Now, also in response to your question, the Akers Motor Lines, Mason & Dixon Lines, Inc., and Roadway Express, Inc., operate into New York, all the way into New York.

Mr. WIPRUD. From what point?

The WITNESS. Atlanta.

Exam. BAKER. Mr. Clay, you are speaking now—

By Mr. JOSELOFF:

Q. Whether or not the Atlantic States Motor Lines—excuse me.

Exam. BAKER. You are stating now from personal knowledge that the data you have before you is correct; is that right?

The WITNESS. Yes, sir; I—I have to look at the data in order to be assured that I am correct.

260 Exam. BAKER. It merely refreshes your recollection?

The WITNESS. That is right.

By Mr. JOSELOFF:

Q. State whether or not Atlantic States Motor Lines also operate—

A. Atlantic States Motor Lines also operate from Atlanta to New York and does provide a daily service as between those points.

I am not familiar with the exact direction of their line, but I know substantially where it is.

Mr. JOSELOFF. Does that clear it up, if the Examiner please?

Mr. WIPRUD. May I ask some further questions on this point?

The WITNESS. Yes, sir.

By Mr. WIPRUD:

Q. Can you give us, Mr. Clay, the relative volume of business that is conducted by the companies that you have mentioned between Atlanta and Charlotte—operating between Atlanta and Charlotte, as compared with the volume of business which would be rendered by the merged companies, that is, assuming that Horton and Transportation were merged, could you give us the comparative volume of business of the remaining truck operators?

A. I can provide you nothing more than an opinion, sir, because I have no way of knowing the exact volume of business of these other carriers. I presume I could only hazard a guess about it.

I don't know what it would be.

261 Q. Would you say that the merged companies—I am speaking now of Horton and Transportation—would, based upon their past years experience, be the dominant carrier between those two points?

A. The dominant; no, sir.

Q. Would they transport in volume more than any other single company?

A. I think that is conceivable.

Q. Well, is it a fact, so far as your knowledge is concerned?

A. I don't know. I don't know. The records of the Commission would show that very quickly.

Mr. WIPRUD. Well, I think it is important, Mr. Examiner, to know the relative volume of business between the points where competition is to be somewhat restrained—restricted, rather, in order to give an accurate picture. If this witness does not know, we hope that there will be other witnesses who do know. He is president of Transportation Company and has apparently made a study of this proposed application and its effect upon competition.

Exam. BAKER. Mr. Wiprud, from experience in connection with the other application before us last year on the Transport Company, I think I could state that certainly the records of the Commission would not disclose in connection with any of these competitors what portion of their business is derived

262 from operations between certain points; and I doubt if applicants would have any witnesses who would have knowledge of the volume of business done by their competitors between certain points. I believe the only way in which that

could be obtained would be to have a representative of each one of those competitors here to testify himself. Perhaps his records would be kept in such a way that he could state that, but, on the other hand, I don't see how I could require applicant to give such testimony, knowing its unavailability.

Mr. WIPRUD. Well, in view of the Examiner's statement, may I inquire of this witness—and I do—what is the volume of business based upon last year's experience, transported by Transportation between Atlanta and Charlotte?

The WITNESS. As between Atlanta and Charlotte I would—I think I have jotted that figure down. I would rather rely on it if I have it. [After a pause.] I would say ten million pounds a month, would be my estimate.

By Mr. WIPRUD:

Q. Have you any way of estimating that in dollars gross?

A. No, sir; I have no such break-down. It could be—it can be ascertained.

Q. I think perhaps it might be a clearer way to express it to get the gross amount of business between those points, if that is convenient, Mr. Clay.

A. Be very glad to.

Q. And your line extends further, does it, north of 263 Charlotte to—what is the name of your northern terminus?

A. Greensboro.

Q. Greensboro?

A. Yes.

Q. Could you supply it also for that segment?

A. Yes, sir; I can.

Q. Have you any knowledge as to the volume of business of the Horton Lines between Atlanta and Charlotte?

A. No, sir; absolutely not.

Q. Or between Charlotte and Greensboro?

A. No, sir; I do not.

Mr. WIPRUD. That is all I have, Mr. Examiner.

Mr. WOODS. I have just a couple of questions, Mr. Examiner.

By Mr. WOODS:

Q. Mr. Clay, your line runs into Knoxville; does it not?

A. Yes, sir.

Q. And at Knoxville don't you accept freight destined for New York for interchange at some other point, for instance Winston-Salem?

A. We may have some freight moving that way. I don't think it is substantial, sir.

Q. But you do have some?

A. Yes; there would be some.

Q. And you do also interchange at Winston-Salem or some other point on your line with other carriers' shipments out  
264 of New York or that section for Knoxville territory?

A. I think that is true.

Mr. Woods. That is all.

By Mr. O'BRIEN:

Q. Mr. Clay, are you familiar with the local express operation out of Atlanta into New York?

A. I know that it is. I can't say that I am familiar with it. I know that they operate from Atlanta to New York.

Q. Do you know that they run direct from Atlanta to New York or from Atlanta to Charlotte and break down at Charlotte?

A. I was under the impression that it was direct. Perhaps they do break down, Mr. O'Brien.

Q. Now, I believe that earlier you testified as to some 550 employees; so far as your company was concerned. Can you give us a breakdown of those employees—

A. Yes, sir.

Q. As to their various classifications and the number of men involved in each classification?

A. Yes, sir.

Mr. JOSELOFF. May I just make this statement, now, Mr. O'Brien? It might help you. We are preparing an exhibit—you weren't here yesterday, but the Examiner has requested that we prepare a breakdown of all of the companies, and that is in the process of preparation. It will show that for all the companies.

Mr. O'BRIEN. All right. Thank you very much. That  
265 will be all.

Exam. BAKER. Any further cross-examination? Mr. Clay, were all of the carriers named by you as competitors between Charlotte and Atlanta class one carriers?

The WITNESS. Yes, sir; I believe that every—I know that all of our—those that I designated as the principal ones are. I believe that they all are.

Exam. BAKER. There is also some competition between your company and Barnwell Brothers; is there not?

The WITNESS. Yes, sir. Yes, sir; there is.

Exam. BAKER. Between what principal points?

The WITNESS. Well, we compete—the principal points with which we compete with them is from Greensboro to Asheville.

Exam. BAKER. You also compete, do you not, between Asheville and Charlotte?

The WITNESS. Yes, sir.

Exam. BAKER. And between Charlotte and Greensboro?

The WITNESS. Yes, sir.

Exam. BAKER. Is there substantial competition between your company and Barnwell Brothers between those points?

The WITNESS. No, sir. Well, I—of course, "substantial" is a relative term. We have our tonnage as between Greensboro—Greensboro and Asheville which is the point where we have the most substantial competition, I believe; it is about 600,000 pounds a month.

266 Exam. BAKER. Who would you say is your principal competitor north of Atlanta?

The WITNESS. That would—that would be hard to say. I don't think you could say any one carrier was our principal competitor. I would say that our principal competitors are Lewis & Holmes, Horton, Mason & Dixon, Miller Motor Express.

Exam. BAKER. Has there been any substantial change in the financial condition of Transportation, Inc., since April 30, 1941?

The WITNESS. No substantial change. It has not improved any, but it is—it is probably a little worse. We have continued to experience the loss.

Exam. BAKER. I notice that in 1940 there was an increase over 1939 of about \$120,000 in your total operating revenues, but it appears that your deficit increased from about \$13,000 to \$41,000. Is that about right?

The WITNESS. Yes, sir; it looks like we worked around to a situation now that the more business we do the more money we lose.

Exam. BAKER. Do you have any explanation for that?

The WITNESS. Yes, sir; I do. You must remember—first and primarily, I think it is these—the fact that we undertake to go on without adequate capital. We have much borrowed money. We pay fairly high rates of interest on it. Secondly, while we  
267 have managed to do fairly well with our equipment, we have been able to do nothing about our terminal facilities. The delay requires that we do a lot of shifting around, and the result is we damage some freight that ought not to be damaged. Our men don't have the proper places to work and can hardly be blamed for much of the damaged freight. It takes a longer time to do the job and they are not equipped to where they can do it well. We have not yet been able to—the carriers generally have not yet been able to adjust themselves to the new laws which were passed in Alabama which, for the first time, provide intrastate rates and tend to eliminate a practice where some of our competitors were inclined to treat shipments which came to—which were physically interrupted as having come to rest, and becoming intrastate shipments and, therefore, not subject to rates and regulations at all. The laws have now been provided, but it is going to take time to

put them into effect and we are unable, have been unable, to get our fair share of business because of the fact we have undertaken to be a law abiding carrier. Those are some of the things, Mr. Examiner.

Take, for example, in Atlanta: We are so badly lacking in adequate terminal facilities there that we have one warehouse for outbound freight, another warehouse located more than a mile from that point for inbound freight, and our shops located perhaps three miles from both, and then our offices at another place.

268 Exam. BAKER. In case this transaction is approved, do you anticipate Transportation could use the facilities in Atlanta of Horton Motor Lines?

The WITNESS. Mr. Horton and I have discussed that, and I don't know whether that will be practical or not, but certainly I think that if the application is approved the new corporation would recognize an immediate need for that—for an adequate terminal and it would have to be provided in some way. I estimate that we are losing eight or nine hundred dollars a month because of that condition in Atlanta.

Exam. BAKER. There are also a number of other points served by you where you have terminals at which Horton also has terminals; are there not?

The WITNESS. Yes, sir. Yes, sir.

Exam. BAKER. The map indicates that Transportation, Inc., operates to Dothan, Alabama, from Flomaton, I believe it is. Is that correct?

The WITNESS. No, sir. That map was made from an old application and it does not correctly describe it. Actually—well, it shows on here. It isn't correct in the application either. We actually go to Andalusia by way of Opp, and for me—we go to Andalusia and to Opp. I don't have a map before me, so I can't point out that exact location, but we no longer operate into Dothan.

269 There is a shorter route from Montgomery to Dothan, and we found that it was not practical to undertake to provide service into that territory by the more circuitous route which we were authorized to provide a—over which we were authorized to provide a service.

Exam. BAKER. So Transportation, Inc., then, disposed of its operating rights between Opp and Dothan; did it not?

The WITNESS. Yes, sir; to the Acme Freight Lines.

Exam. BAKER. Do you presently interchange freight with any of the carriers here involved?

The WITNESS. Yes, sir; we are—we have a very substantial interchange arrangement with Barnwell Brothers.

Exam. BAKER. At what principal points?

The WITNESS. At Charlotte:

Exam. BAKER. Do you interchange any substantial amount with Horton Motor Lines?

The WITNESS. Not substantial; no, sir. We interchange with them but I wouldn't term it substantial.

Exam. BAKER. Do you interchange with Southeastern Motor Lines?

The WITNESS. Yes, sir.

Exam. BAKER. At what point, principally?

The WITNESS. We would have some interchange with them at Bristol. I know of no other point that we have any substantial interchange with them.

Exam. BAKER. What has been your experience recently with respect to obtaining employees? Have you had any difficulty  
270 in getting sufficient trained employees?

The WITNESS. Yes; we—we have—that has been particularly true of mechanics. There is a great deal of building going on in the south for defense projects and there is a tremendous amount of shipping going on at Mobile and Pascagoula, Mississippi, and there is a demand—particularly a demand for mechanics and we have lost men and we are really very much concerned as to whether the mechanics are going to be available to work or not.

Exam. BAKER. What is the situation with respect to drivers?

The WITNESS. With drivers we have—find it difficult to get trained—to replace drivers that do leave us. Those that we have we are very well satisfied with, but our new drivers have been sufficiently inexperienced to where we are—have really been concerned about it. We have had some trouble because of it, not any more than enough to concern us, but we have been watching it very carefully and we are a bit concerned about that too.

Exam. BAKER. Are there any additional questions of this witness? Witness excused.

(Witness excused.)

Exam. BAKER. Mr. Joseloff, is Mr. Lawson ready to testify yet on this competition? I feel it would be better if he  
271 could testify before some of the other gentlemen representing individual companies.

Mr. JOSELOFF. Mr. Cochran plans to put him on, and if we might have a short recess at this point—

(Discussion between Counsel ensued off the record.)

Mr. JOSELOFF. If it is satisfactory to you, Mr. Examiner, Mr. Cochran would like to put on Mr. Sutton in answer to questions in which Mr. Wiprud was interested so far as the Brown Equipment

Company was concerned, and after that we will have had an opportunity to see Mr. Lawson, to see if he is ready to go on with his competition exhibit before we put on the other carriers.

Exam. BAKER. Very well.

Mr. BURNETTE. Mr. Examiner, before you call the next witness may I make a statement and ask a question?

Exam. BAKER. Yes; Mr. Burnette.

Mr. BURNETTE. With respect to the proposed report in this case I would like to leave with Mr. Connolly on my right the right to speak for me with respect to the proposed report. I am of the opinion at this time that we would like a proposed report, and will it be permissible for Mr. Connolly to speak for me?

Exam. BAKER. Will that be satisfactory?

Mr. SULLIVAN. We have no objection to it, I wouldn't think.

272 Mr. BURNETTE. The next statement—the statement, rather, that I would like to make is this: I am with the Lynchburg Chamber of Commerce, a City of 45,000. We have approximately eleven motor carriers serving Lynchburg. Out of the eleven we have seven that are what we term sufficiently strong carriers. This proposition was submitted to my traffic committee and to the Board of Directors of the Chamber of Commerce, which committee and board instructed me to enter an appearance and to approve the present application with one provision: And that is that the financial set-up and structure is fundamentally sound, that there is no watered stock and that it is a good, sound business proposition. Thank you.

Exam. BAKER. All right, Mr. Cochran.

Mr. COCHRAN. Mr. Sutton.

Mr. SULLIVAN. Excuse me, Mr. Cochran. Would you like—Mr. Burnette, would you like to have us mail to you, if you are not going to be back, a copy of any other exhibits, the financial exhibits with respect to the matters you discussed just now, at your office?

Mr. BURNETTE. I will appreciate that very much.

Mr. SULLIVAN. We will be happy to do it.

Mr. BURNETTE. All right, sir.

Mr. SULLIVAN. Could I have your address, then?

Mr. BURNETTE. Yes, sir.

273 J. A. SUTTON, being first duly sworn, testified as follows:

Direct examination by Mr. COCHRAN:

Q. What is your place of residence?

A. Charlotte, North Carolina.

Q. What companies are you connected with?

A. I am connected with Horton Motor Lines, Inc., of that city as secretary and treasurer, and I am a director of Brown Equipment & Manufacturing Company of that city.

Q. Are you acquainted with the operations of Brown Equipment, generally speaking?

A. I am.

Mr. COCHRAN. I have no questions, Mr. Examiner, to ask this witness, but he is on the stand primarily to answer questions that will satisfy Mr. Wiprud with reference to some data that he wanted to get, and this information has been secured by phone and Mr. Wiprud has agreed to take it, as I understand it.

Mr. WIPRUD. Yes, sir; Mr. Examiner. I would like to ask a few questions of this witness.

Cross-examination by Mr. WIPRUD:

Q. Mr. Sutton, Exhibit B-6 in Form B. M. C. 45 in Docket M. C.-F-1612 shows the—

Mr. SULLIVAN. Excuse me, sir; Mr. Wiprud. Are you reading from an application, copy of the application?

274 Mr. WIPRUD. Yes, sir.

Mr. SULLIVAN. Thank you. And what page—what exhibit was it?

Mr. WIPRUD. It is Exhibit B-6.

Mr. SULLIVAN. Thank you very much.

By Mr. WIPRUD:

Q. Shows the annual sales of the Brown Equipment and Manufacturing Company for the years 1939, 1940, and 1941. Can you state for the record the amount of those sales—and I now show the exhibit to you—that were made by the Brown Company direct to the Horton Motor Lines?

A. It isn't necessary for me to look at the exhibit, Mr. Wiprud. That has been prepared by the auditors. But I can give you the facts with regard to the revenue or the sales, rather, of Brown Equipment and Manufacturing Company for the fiscal year ended April 30, 1941, and then give you the assurance that those percentages were practically the same for the two preceding years. I believe you have said that that would be satisfactory.

Q. Yes.

A. For the fiscal year ended April 30, 1941, the sales to other firms than Horton were a very small percentage, 2.093 percent, two and ninety-three thousandths percent. The remainder of the sales were to Horton Motor Lines, Inc., and in those two preceding years, which constitute the entire history of Brown, those percentages would vary only a small amount if any.

275 Q. Mr. Sutton, are you familiar with the provisions of the Clayton Act, Section 10?

A. I don't recognize the section exactly, but I know what you are referring to.

Q. That section forbids the making of contracts by a carrier for supplies in amount in excess of \$50,000, one year, with another company having an attorney, officer, director, or agent, also, serving in such capacity except through competitive bidding. That, generally, is the provision.

A. Yes; I am familiar with the provision.

Q. What steps have you taken to comply with that?

A. We have complied fully with that. The requirements of Horton from Brown have exceeded the \$50,000 stated and we have followed the Commission's requirements and regulations in that instance, having opened up competitive bids, advertising properly in the newspapers, made available to any bidders any information they might like to have and would need, such as specifications, lists, et cetera. Those files have been completed and are now on file with the Interstate Commerce Commission.

Q. The records of the Commission, Mr. Sutton, disclose that such information was filed with the Commission as to certain contracts on December 20-26, 1939?

A. Yes.

276 Q. And aside from that, there is nothing in the records to indicate that for the period that you have described; that is, for the 3-year period that any other effort was made to comply with Section 10 of the Clayton Act?

A. That is not correct because the same thing was done for the year 1940.

Mr. SULLIVAN. Excuse me; Mr. Wiprud. I took occasion this morning to examine the record, and I find for the year 1940 there are similar filings with the Commission. It is contained right in the Commission's files.

Exam. BAKER. The record will speak for itself.

Mr. WIPRUD. The record will have to speak for itself.

By Mr. WIPRUD:

Q. What have you to say for the year 1939?

A. The sales from Brown to Horton in that period were not sufficient. I don't think they exceeded the \$50,000 involved. Brown commenced its operations in May of 1938. I think that is correct.

Q. And what was the volume of business during that year, for the remainder of the calendar year?

A. I cannot tell you not, but as I remember it was below the required amount.

Q. Will you supply the record with that?

A. I haven't it here with me. I presume I could supply it.

Q. Just to have the record complete.

A. Yes; I could do that.

Mr. WIPRUD. That is all I have, Mr. Examiner.

277 Exam. BAKER. Any further questions of this witness?

Witness excused.

(Witness excused.)

Mr. JOSELOFF. May we have a short recess, Mr. Examiner?

Exam. BAKER. How long do you want?

Mr. JOSELOFF. We are looking around for Mr. Lawson to testify, as you requested, and he just stepped out. We want to have an opportunity to locate him.

Exam. BAKER. Take a ten minute recess.

(Whereupon a short recess was taken.)

Exam. BAKER. Come to order, please. Mr. Wiprud, I understand you wanted to ask Mr. Sutton one or two more questions.

Mr. WIPRUD. Yes; if you please, Mr. Examiner.

J. A. SUTTON resumed the stand and testified further as follows:

Cross-examination (resumed) by Mr. WIPRUD:

Q. Mr. Sutton, let us see if we understand each other. According to Exhibit B-6 of Form B. M. C. 45, the annual sales of the Brown Equipment and Manufacturing Company, Inc., was, for the year ended December 31, 1941, \$914,018.80?

A. I am familiar—

Exam. BAKER. Is that 1940?

Mr. WIPRUD. \$914,018.80. I am reading from the exhibit, Mr. Sutton.

278 The WITNESS. I don't have the exhibit before me here. I don't know what period it covers. What is the exhibit again?

By Mr. WIPRUD:

Q. Exhibit B-6, Form B. M. C. 45.

A. Let us see. This is the carrier companies. Yes; that appears to be correct. I did not prepare this exhibit. That is the way I read it.

Q. And for the year ended December 31, 1940, the figure is \$856,517.03?

A. That is correct.

Q. And for the year ended December 31, 1939, the figure is \$169,402.42?

A. That is right.

Q. Now, as I understand your testimony, of those amounts approximately 98 percent constitutes sales from the Brown Company to the Horton Company?

A. That would be correct, yes.

Q. Now, what effort was made to comply with the provisions of the Clayton Act, other than that made in December 1939?

A. In December, 19— and December 1940 also.

Q. December, 1940?

A. Yes; that is right.

Q. No effort was made to comply with the Clayton Act for the year 1939?

A. Not so far as I remember, that is correct.

Mr. WIPRUD. That is all.

279 The WITNESS. As I remember, attention was called to this by counsel at whatever time we filed our first report with the Commission. If we did not file it prior to that time, it was probably in violation.

Mr. WIPRUD. That is all, Mr. Examiner.

Mr. COCHRAN. I didn't understand that exactly.

By Mr. COCHRAN:

Q. Is it a fact, or is it not that when Brown Manufacturing & Equipment Company first began to do business that you sent out these advertisements and bids of the first purchase over \$50,000 or more?

A. As I remember it, Mr. Cochran, it was the first time which we sent out those bids, was in December 1939; I think that is correct.

Q. When did it begin to do business?

A. It began to do business in May of 1938. Now, that is my remembrance. It is entirely possible that there may be an earlier report, but I think not.

Mr. WIPRUD. That is all.

Exam. BAKER. Witness excused,  
(Witness excused.)

Mr. COCHRAN. Mr. Lawson.

J. D. LAWSON, being first duly sworn, testified as follows:

Direct examination by Mr. COCHRAN:

Q. State your name, place of residence?

280 A. J. D. Lawson, 1901 Lombardy Circle, Charlotte, North Carolina.

Q. Are you connected with Horton Motor Lines?

A. Yes, sir; I am.

Q. In what capacity?

A. I am a director of the company in charge of commerce matters.

Q. How long have you been employed as such?

A. Since May 1936. I have not been a director that long, sir. I have been with the company since May 1936.

Q. Mr. Lawson, have you prepared an exhibit showing competition of competitive motor lines operating over the routes duplicated by Transportation, Horton Motor Lines, and Barnwell Brothers Company?

A. Yes; and including Southeastern.

Q. That is right; I forgot—failed to mention Southeastern.

A. The exhibit that I have prepared reflects the principal motor common carriers—

Q. Before you go into that, let us identify it. You have the exhibit before you?

A. Yes, sir; I have a copy of it.

Exam. BAKER. The exhibit described will be identified as Applicant's Exhibit No. 2.

(Exhibit No. 2, Witness Lawson, marked for identification.)

Q. All right. Mr. Lawson, go ahead and describe the exhibit and make such comments as you will, make it clear to all parties, the Examiner and all listeners of this conference, just what it means.

A. This exhibit—

Mr. COCHRAN. Anybody want copies of this?

A. (Continuing.) This exhibit was prepared to reflect the principal motor common carriers operating in whole or in part within that territory embraced in the application here under consideration where there is a duplication of operating—strike that—of operations by two or more carriers parties to this application. The carriers reflected in this exhibit are carriers about which I have personal knowledge as to a considerable part of their operations and the territories they serve. The second page on which is listed 35 carriers shows what we call and are generally termed east-south motor lines, that is, carriers operating between points north of the Potomac River, on the one hand, and parties in the southeastern part of the United States, on the other hand. The second page, on which are listed 18 carriers reflects motor common carriers operating between points wholly in the southeastern part of the United States.

Q. Are those numbered 36 to 53, inclusive?

A. That is correct; and I should explain that the odd number came about in this manner: Out of the list of several hundred carriers in the territory being considered I selected 50 of the more substantial carriers about which I had some knowl-

edge as to their operations. After that list was compiled I recalled three additional carriers which I had not included. Those were the Thurston Motor Lines, a carrier operating in North Carolina and Virginia and the Fleming Transfer, which is the successor to the Phillip Greenberg operation between Richmond and Danville, Virginia, as well as other points. They operate a regular route service between those two points, and then the third is the Karl Lenker operation from Richmond, Virginia, and points in that vicinity southward into the Carolina—the Piedmont area of the Carolinas. The third page of the exhibit shows the principal points known to me to be served by these carriers. I selected the principal points along the routes of the Associated Transport Carriers in the southern area and have here reflected whether or not the—one or more of the 53 lines named in the exhibit serves those points or any of them. For example, the Akers Motor Lines, the first carrier on that list, is shown as serving certain points along the—what might be termed the main route operations of Horton and Barnwell between New York City and Atlanta, Georgia. Now, I have omitted Richmond, Virginia, or any reference to a service at Richmond, Virginia, because I do not know that that particular carrier serves that town. However, I do know that the carrier operates through there and it is a holder of a certificate with certain restrictions, and I—I believe I recall correctly now that it is not permitted to serve Richmond northward; that is, I mean by that picking up traffic in Richmond and moving it to northern points. I have included in this list the cities of New York and Philadelphia as well as 20 other points, beginning with Baltimore, Md., and thence progressing southward to Atlanta, Ga. I began with Baltimore, Md., because that is generally understood to be the breaking point in the characterization of an east-south operator. There are some east-south carriers, however, that operate only to Baltimore from the South. For one is No. 9, the Colonial Motor Freight Line. Its operation terminates at Baltimore on the north and extends to High Point, N.-C., on the south as to its regular route operation. However, it covers a vast territory in the Piedmont section of North Carolina.

Now, the southern carriers about which I just spoke are shown at the bottom of this page and there has been reflected the information as to whether or not the carriers, according to my knowledge, serve the several points. Some points opposite—some points have been indicated with the letter "X," suffixed by an asterisk, which means that I do not personally know that the carrier serves the point concerned, but that such carrier does hold a certificate from the Interstate Commerce Commission permitting it to do so.

The fourth page, or the map attached to the exhibit, is a segment of the map included in the application, and shown over on  
284 the easel reflecting the duplicating operations of the four carriers here concerned in the southern territory. Now, with respect to the operation between Roanoke, Va., and Winchester, Va., I should make this observation: That Horton has been shown as operating over that route and into Winchester, Va. That is true. Horton operates over that route, but it hasn't any authority to serve points along the route until it reaches Winchester, and the reference to that carrier has been inserted here in order to avoid any confusion in a consideration of the map in this exhibit with the one in the application and with the operating authority as it has been granted or approved by the Commission for that carrier.

Exam. BAKER. Is Horton Motor Lines authorized to serve Roanoke?

The WITNESS. No, sir; it is not. It does not operate in there, it does not operate through there, and it does not have any authority to serve the point. It will show, Mr. Examiner, by the map in the application that Horton's operating route extends from Alta Vista, which is its most—that isn't quite correct. Which is a point north of Danville. The operating—its operating route then extends from there to Lynchburg, Va., where it crosses the mountain range and traverses U. S. Highway 11 through the Shenandoah Valley to Winchester.

Exam. BAKER. What is the last point it can serve on that route, Lynchburg or Lexington or—

285 The WITNESS. No; the last point, progressing north from Greensboro, N. C., would be Alta Vista, Va., until it reaches Winchester. Winchester is the most northern point in Virginia that Horton could serve, but there isn't any intermediate point to Winchester and Alta Vista. Neither does it have the authority to serve any points between Alta Vista and Washington, D. C., over U. S. Highway 29. That is another through operating route, and the map in the application reflects that operation, that through highway, but if the application here is approved and a unification effected there would not be any diminution of the service over that particular highway as is the case over the highway to Winchester, so far as Horton is concerned. There is only one operator now in this matter that has the authority to serve points between Alta Vista and Washington over U. S. Highway 29, and in the event of unification it would still be that same carrier.

Q. As I understand it, the map you have here, Mr. Lawson, shows points and routes wherever there is a duplication of rights

as between Transportation and/or Horton and/or Southeastern and/or Barnwell?

A. That is correct. That is south of Baltimore, Md.

Q. That is right.

A. I haven't projected this on to New York to show any duplication of operating authorities or actual operations by any  
286 of those carriers north of Baltimore to New York, and so forth. I do know, however, that there are a large number of motor common carriers operating between Baltimore and New York as well as other eastern points in competition with our own company as well as Barnwell and any other company involved in this proceeding.

Mr. COCHRAN. Mr. Examiner, we would like to introduce this exhibit in evidence as Applicant's Exhibit No. 2.

The WITNESS. Mr. Cochran, I should like to add to the testimony which I have given with respect to this, that these carriers are by no means all of the operators known to me to be operating between the East and the South. The ones that I have shown here are carriers that operate more or less regularly and over the routes served by our line; and are —

By Mr. COCHRAN:

Q. You say "our line"—

A. I am referring to Horton, and it also includes Barnwell Brothers and Transportation. Neither does the—neither does the exhibit reflect the full operations of these carriers. This is just a segment of their operation, generally speaking, as well as that of the carriers involved in this application, for example, the Howard Hall Company and Jack Cole Company, carriers Nos. 15 and 16, have their main headquarters in Birmingham, Ala., and operate out of that point. They operate up to New York City, to my personal knowledge, and elsewhere. They operate into the southeastern part of the country, and so forth, but this reflects  
287 purely the competition that these carriers provide us. Now, there are others, the R. D. Fowler Motor Lines, Wayne Motor Lines, Dial Brothers, G. & M. Transfer Company, Reliable Trucking Company, Kelly Motor Lines, Old Hickory Freight Line, Billings Transfer, Northeastern Lines, S. & T. Trucking Company, Bassett Furniture Trucking Corporation, and the Davis Motor Lines, that are also operating between the East and the South. Mr. Examiner, I shouldn't mislead in my statement with respect to some of the latter carriers. They are carriers claiming to have been irregular route operators, and in the case of the Bassett Furniture Trucking Corporation, for example, operating out of Bassett, Va., and the Martinsville area, I think I recall correctly that

the Commission found that they were entitled to continue to transport new furniture out of that section of Virginia to quite a large territory in the North and Northeast, and on the return general commodities to a large part of the southwestern part of Virginia, including Danville, Martinsville, and points in that area. It may also include a part of North Carolina, but I am not certain about that at the moment, but the Old Hickory Motor Freight Line likewise has a certificate providing for the transportation of new furniture and other specified commodities northbound and general commodities southward. The other carriers reflected in the exhibit, however, have only the usual exceptions in the class of traffic that they will transport either in their certificates or  
 288 their claims to operating authorities now pending before the Commission.

Q. Mr. Lawson, do you know anything about the numbers of pieces of equipment that these competing lines have?

A. Oh, yes. I know of only one source of that information, and proceeded to examine the records of the Interstate Commerce Commission here in Washington respecting the sworn statements of these various carriers in their form B.M.C. 71 applications for Interstate Commerce Commission identification plates wherein they are required by the Commission to set forth the number of units being operated at the time the application is made. I examined 48 of the applications of these carriers, five of the files not being readily available.

Q. Are you speaking of 48 of the 53 listed?

A. Forty-eight of the fifty-three carriers; yes, sir. Five of those files not being available here in the offices at the time I made this investigation last week, and computed the following figures: One thousand and thirty-two straight trucks, 1,591 tractors, 1,681 semitrailers, or a total of 4,304 units. The carriers for which I could not procure this information were Central Motor Lines, Incorporated; Jack Cole Company, Incorporated; Transport Corporation of Virginia; New South—those three carriers are east-south operators. The New South Express Lines, Incorporated; and the Blizzard Motor Express Line; those two carriers being strictly southern—or southeastern operators, short line carriers in the South.

289 Q. Are those companies whose records were not available, are they substantial operators?

A. Well, yes. I should say that it would be my estimate, judging from what I know about the operations, that possibly there would be between 50 and 75 additional complete freight-carrying units.

Q. What is the date of the record from which you secured the information showing the number of trucking units?

A. Various dates, Mr. Cochran. There isn't anything uniform with respect to the application for identification plates, and some of these—some of these applications are recent, and by that I mean within the last couple of months. Others—I believe there are one or two of these short-line operators that have filed only one application with the Commission, and that was dated some time subsequent to the order requiring the motor carriers to display the tags in 1937, I believe it is, in the fall some time. That order became effective, and there were one or two of the applications that were dated back to that time.

Q. The information you have there and the figures you have read into the record are somewhat out of date, then, probably?

A. No, I don't think so—

Q. All right, then.

A. —for this reason: That I have found very few of these carriers on the highway, and I might explain by saying  
290 that I do a lot of my traveling by an automobile between terminals on our own line, and it is part of my purpose to observe the observations of our competitors, and I find very few of the vehicles of these known operators—I am not talking about the fruits and vegetable transporters, but of these carriers who are more substantial operators in the transportation over more regular routes without the interstate identification plates being displayed thereon.

Now, the statements that I examined were sworn statements of the various applicants, and I think that in the case—I believe that it would be found in the case of an older application that the carrier might have disposed of a piece of equipment and merely used the plate for a new piece that he put on. I think that the information is substantially correct. There may have been some additions within recent months by some of these carriers and, of course, too, it is a known fact that some of the carriers do operate leased equipment. That equipment may be operating over the—what is generally termed the trip lease arrangements without interstate tags on them. But I am only considering—in the compilation of these figures, I am only considering those figures that were revealed in the sworn applications of these various carriers for tags.

Q. On page 4 of your exhibit, Mr. Lawson, opposite the names of the 53 carriers there listed and under the names of some 22 towns you have "X's." Each of those indicate that the  
291 company named operates into and through the town under which the "X" appears?

A. That is correct. That is correct, sir.

Q. These 22 towns that you have selected for the purpose of this exhibit are located with respect to Horton, Barnwell, Transportation, and Southeastern's operations in what territory, generally speaking?

A. Well—

Q. Are they the important points along the routes where there is duplication or—

A. Yes, sir; they are the most important points. They are all of the important points, but they are the most important centers from a traffic standpoint, at least in my opinion, from what I know about the territory between Baltimore, Md., and Atlanta, Ga. There are others, however, that are not reflected here, and they are generally in the same area. For example, I think one of the preceding witnesses mentioned Gainesville, Ga. That is south of Greenville, S. C., and generally in the Athens, Ga., territory. That is not reflected here because it is a point served only by Transportation of the carriers involved in this application, while Horton Motor Lines operates through that city, but—

Q. Horton Motor Lines operate through Gainesville?

A. Yes, sir; it has operating rights—it has operating rights through Gainesville, but no authority to serve the point.

292 Q. I see.

A. However, the map in the application shows an operation by Horton through there, and it does give the impression that there is duplicating right to operate to that point. That is only a through route, so far as Horton is concerned.

Q. Horton, then, as a matter of fact, has no right to serve the town of Gainesville?

A. That is right; and any unification of the carriers—that is, of Horton and Transportation—would not result in any less service to that point.

Q. Neither has Barnwell nor Southeastern the right to serve it?

A. No; that point is entirely out of the territory served by those two carriers.

Q. Are there any other other comments by way of explanation, Mr. Lawson, that you think you should make with reference to this exhibit?

A. One comes to mind. That is with respect to the points—the page showing these carriers and the points, the principal points, served by them. I do know that not only have these carriers the through operations or the operations reflected on this paper, but also they have joint arrangements among themselves—not all of them. I can't say as to that. But I will illustrate, for example, by saying that Brooks Transportation operates from New

293    York City to Greensboro and Winston-Salem, N. C. At that point they have interchange facilities under through rate arrangements with the southern carriers, or some of them, for points beyond going down into the deep South. I mean Georgia and Alabama. The Great Southern Trucking Corporation operating from Greensboro southward as far as Florida and into Tennessee and Alabama and that section are in a position to interchange traffic with carriers coming into Greensboro under through rate arrangements. That combination of facilities is available generally between most of these carriers that I have set out on this document, and I know that they do perform those services, or most of them do anyhow. The American Trucking Corporation, for one. Next is the A. A. A. Highway; Lewis & Holmes, and so forth, down the list of southern carriers are what are generally called short-line operators in the southern territory feeding traffic to many of the through lines such as Akers and Horton, Harris, and so forth, as well as Barnwell, too. So that the exhibit by reflecting east-south operators, in the first instance, is not intended to indicate that they are the only through rates composed of the substantial operators between the extreme points of New York, on the one hand, and Atlanta, Ga., on the other, as reflected here. These southern carriers can be used and are used in the transportation of traffic in joint arrangements. That is true also of carriers operating into Richmond, Va., from the eastern section where the interchange is made with carriers beyond into the Carolinas and Georgia, and so forth.

294    Q. Is the W. H. Tomkins Company—do you know anything about that company?

A. Yes, sir; they are located in Nashville, Tenn. They operate quite a far-flung service throughout the southeastern part of the United States, going as far as Florida. They have been operating a regular route operation between Greensboro, N. C., on the one hand, and Nashville, Tenn., on the other, and sought authority from this Commission to continue such an operation in the transportation of traffic through joint arrangements between Baltimore, for example, and by way of illustration, and Atlanta, Ga.

Q. How about Hoover Motor Company, Hoover Motor Express Company?

A. That is a Tennessee carrier; and they operate a little bit out of the territory generally served by our companies. I say "our companies." I mean Horton and Barnwell and Transportation, although there is competition with Transportation in the eastern Tennessee section and—I don't know so much about them.

Q. Any competition with Southeastern?

A. Oh, yes. Yes. They compete with Southeastern over in the Nashville, Knoxville, and Bristol area, in that section of Tennessee.

Q. Do they handle east-south freight?

295 A. Yes; to the best of my knowledge, they do. Not directly, of course, but through joint arrangements with other carriers.

Q. Do you know which one of the carriers would you name—which carrier would you name operating in the Nashville area as being the most substantial of the large ones, if you know, if you have such information?

A. Perhaps I don't understand your question.

Q. What company operating—what motor carrier operating in the Nashville area would you name as the largest of the group that does operate in that territory?

A. The group, you mean, serving the east-south, or serving the South, or what area do you have in mind, Mr. Cochran?

Q. Operating in the Nashville area. I don't care which way they go, whether they go East or West.

A. There are carriers operating out of that area west toward Memphis that I don't have much information about. As to the carriers which I have discussed—I have not examined the statistics on the other, but the Super Service is a substantial operation as well as Southeastern.

Q. Mr. Lawson, have you any knowledge of the tonnage either in pounds, tons, or however it is so calculated, carrier by Horton Motor Lines from Atlanta to New York per annum? Have you that data?

A. No; I don't have it. That information is given to my department periodically, Mr. Cochran, but I don't make  
-296 any attempts to keep it in my mind.

Q. Of course, you haven't any such information or reference to Southeastern?

A. I haven't anything, any data available here, as to that—

Q. You haven't that data available here as to Southeastern or Transportation or Horton?

A. No; that is confidential so far as those lines are concerned, and I haven't access to it, sir; nor have I it with respect to these other carriers. However, I do know that the operations here are substantial.

Q. Is that information available, readily available, the amount of freight transported by Horton between different points along its lines? Do you know whether that is readily available, or whether it is not available?

A. Well, as to strategic points, it is; there are certain traffic statistics that are available to the management.

Q. I understand. You don't know whether it is broken down as between Charlotte and Richmond, or as between Richmond and Baltimore?

A. Oh, that isn't—no; that isn't available in any detail of that sort.

Q. Yes, sir.

A. However, there are times when such information is necessary in the prosecution of a rate case, for example, before the Commission when it is necessary for us to assemble that  
297 data through the tedious process of going back through the records, but there is no effort made to select that information periodically.

Q. Are there any other statements that you can think of you should make with reference to this exhibit?

A. I believe that the Examiner made some mention of Horton Motor Lines' operation, or operating authority, when Mr. Horton was on the stand; and I believe that—I think I am safe in saying that I was delegated to answer it.

Q. I suppose you go into that matter of the scope of Horton Motor Lines' operations?

A. Horton operates from Rome, Ga., on the South, through Atlanta, Ga., Athens, Greenville, Spartansburg, Charlotte, Greensboro, thence Durham and Richmond into Washington, Baltimore, Philadelphia, and New York, and from Greensboro through Lexington—through Lynchburg and the Shenandoah Valley to Winchester, Cumberland, Md., and into Pittsburgh; between Baltimore and Pittsburgh via Cumberland, Md., and between Baltimore and Scranton, Pa., via Harrisburg and Wilkes-Barre; and between Philadelphia, on the one hand, and Allentown and Easton, on the other. Those are the principal routes of the company. That does not include, of course, the terminal areas around the several main terminal points that we have on our line. The application for authority under the grandfather clause of  
298 section 206-A of the Motor Carrier Act has been acted upon by the Commission with the exception of an operation between—the claimed rights between Baltimore and Pittsburgh; and the application has been granted except as to that part of the operation, and they protest against the Baltimore-Pittsburgh operation came about through a predecessor of Horton's operating from Cumberland to Pittsburgh filing an application where it claimed the same rights. It sold to Horton. Because of several applications having been filed in a name similar to that of the predecessor, that is, in the name of Twigg, in and around the Cumberland area, it was some time before we detected the claim of this particular individual and were able to act against it.

After a formal hearing of the matter before the Interstate Commerce Commission, that is, the application of the predecessor by the Commission here, we went into the courts in Maryland, and sought injunctive relief against the operation which we obtained eventually. The application of the predecessor was then reopened and the Commission was informed of the relief we had obtained in the court in Maryland, and just recently it—strike the “it.” And just recently the Examiner’s proposed report came down denying the claim to authority over that section of the operation which our company, the Horton Company, now operates and claims authority. That very materially alleviates the protest against the claim between Baltimore and Pittsburgh.

299 Mr. COCHRAN. Mr. Examiner, we would like to introduce this exhibit as No. 2, and offer it in evidence in this case.

Exam. BAKER. It may be preferable to wait until after cross-examination.

Mr. COCHRAN. Cross-examination? That is all the questions.

Exam. BAKER. Any cross-examination?

Mr. WIPRUD. Yes, Mr. Examiner; I would like to ask a few questions of the witness.

Cross-examination by Mr. WIPRUD:

Q. Mr. Lawson, I take it the purpose of this Exhibit No. 2 is to demonstrate the amount of competition that will remain, assuming that this unification is approved?

A. No, sir; that is not quite exactly right. The purpose of that exhibit is to demonstrate that there will be some competition if this application is approved, sir. It does not demonstrate all of it, as I have stated before, and—I know that it is not all of the operations. It doesn’t reflect all of the operations in the territory which attention was given to, and which this exhibit reflects. This is the substantial competition, sir.

Q. Are these all class I carriers?

A. Practically every one. There may be a few of those southern carriers, and even at that there are very few of them, for example, carrier No. 45, I believe that that is not a class I  
300 carrier, but that operates—as far as this application is concerned, that carrier operates only between Greensboro and Winston-Salem, a matter of about 20 miles. The rest of the carriers, I believe that if my recollection is correct, they are class I operators. I endeavored to confine my exhibit and survey here to class I operators, sir.

Q. Mr. Lawson, in the event that the Commission approves the pending application of Associated Transport, Inc., will there be any other carrier of a similar size in this territory?

A. The size of the Associated Transport, Inc.?

Q. That is right.

A. No; I don't think there will be, not the size of the Associated Transport.

Q. Then, insofar as Associated Transport is concerned, there will be no competitor of equal size?

A. Well, not if they remain static. However, there are applications pending before the Commission now for consolidations and leases, and so forth, of some of these carriers that I have reflected here. So that I don't know whether there is going to be a combination of any of these 35. If there was a combination of these 35 carriers permitted by the Commission it would be larger than Transport, including all of its operations, assuming Associated didn't grow.

Q. But, coming back to my question, if this application is approved there will be no other operation of equal size  
301 throughout this territory?

A. No; I don't think so.

Q. Then, so far as the carriers you have listed in Exhibit No. 2 are concerned, they are competitors, or they would be competitors, rather, only over certain segments of the proposed operation of Associated Transport, Incorporated?

A. Let us see if I understand your question correctly. That the first carrier—I will answer you this way, sir, by saying that the first carrier on the list, while I have shown an operation from New York to Atlanta, Ga., he actually operates from Boston, Mass., in the transportation of general commodities. I didn't attempt to go up into that part of the Associated Transport territory. Now, carrier No. 12, and as well as carrier No. 19, is operating into the New England territory. Now, when you say "over the territory" there isn't any single carrier that would operate—I don't believe there is a single carrier here that would operate from Boston, Mass., to New Orleans, La., on a direct single line operation. However, carrier No. 26, Roadway Express, Incorporated, operates from New York to Texas, and they cover the Southeastern territory just about as much as Horton and Barnwell. They may not operate as much equipment down there, but they have—they have at one time or another recently, within the recent past, informed the Commission under oath that they operate some 500 pieces of equipment themselves.

302 Q. Well, now, Mr. Lawson, it is proposed that Associated Transport operate between New Orleans and New York as a single line operator.

A. Yes, sir.

Q. Assuming that the application is approved and such operation is instituted, what competition, if any, will Associated Transport have in the business between New Orleans and New York?

A. Oh, they would have quite a bit of competition, sir. There are short-line carriers operating from such points as Montgomery, Ala., into the Deep South and—out of Atlanta, Ga., for example, into the southwestern part of the southeastern section of the country, and, as I said before, those carriers join in through-through rate joint arrangements with the carriers from Atlanta, Ga., for example, operating through to New York and Boston, so that—

Q. Let us have an illustration, now, of the competition that will exist with Associated Transport, Inc., between New Orleans and New York, assuming that this transaction is approved.

A. Well, in the first place, my exhibit, sir, doesn't go to New Orleans, and I made no investigation—or I did not set out here any information about operations south of Atlanta, Ga., because, in the event of unification, there will still exist only one  
303 carrier, and the only carrier that is involved in this application, so far as Associated Transport is concerned. There isn't any lessening of service there, so that I would say this: That, as it is true now, there would be Associated—there very easily could be Associated Transport from Atlanta, Ga., to New Orleans and any one of these carriers from New York to Atlanta, Ga. Transportation, Incorporated, interchanges traffic at that point and at points north thereof.

Q. One of the substantial benefits claimed for this proposed unification is the elimination of interchange, is it not?

A. That is correct, as between companies; that is true, yes.

Q. And if it were necessary for a combination of competing lines to interchange several times between New Orleans and New York that would not put them in a competitive position with a line that would not have to interchange, would it?

A. Well, that would depend on how they worked out their interchange. If there was an actual physical handling of all of the traffic that might not work out so well. They are interchanging the traffic—I cannot say that they are interchanging under the interchange of equipment arrangement now at Atlanta, but they do in other places. There is an interchange of traffic over the route which you—of which you speak at the present time, and it is impossible to get the traffic, as far as motor lines is concerned, through any other way.

Q. Did you hear Mr. Horton's testimony to the effect that through this unification and the elimination of interchange  
304 that some 36 hours would be saved in transporting goods from the northern area to the southern part of the United States?

A. Yes; I heard that, sir.

Q. And that, as I understand it, is to be accomplished primarily through the elimination of interchange?

A. I think that is true, too.

Q. That is, interchange that exists at the present time?

A. That is right.

Q. If that is the fact, then, those carriers that are compelled to resort to interchange would be at a disadvantage to that extent with Associated Transport?

A. Well, I don't know quite how to answer you on that, sir. I will say this: That if it is a matter of permitting a carrier to handle the traffic through and do it in competition with water lines and lower rates via the coastwise and Gulf services or deprive the public of the through motor-carrier service. It is a toss-up whether the consideration should be given to the other motor carriers. If the other motor carriers don't see fit to adjust their services to the desires and needs of the public, that is one thing. I—I will say this to you, sir: That it is entirely possible that right today our company may have a much more advantageous interchange arrangement and through traffic set-up into New Orleans or any other point in the Southeast than would some other carrier probably not quite so much concerned with giving a better service to the public.

305 It has always been our attempt to get the traffic through as fast as possible, deliver it before it was shipped, if it was possible to do so. That is the service our people would like to have. We try to coordinate our schedules with our connecting carriers. We endeavor to work all of those factors and take into consideration anything possible that will make such a service available to the public, despite perhaps a request for one cent or two cents more on the division of the traffic by the connecting carrier, and if some other competitor of ours doesn't see fit to pay the extra cent for the faster service and coordination of schedules, I don't know what one could do about it.

Q. Well, in order to avoid effective competition to Associated Transport it boils itself down to this, does it not, Mr. Lawson: That another large combination would have to be effected somewhat along the lines now proposed by Associated Transport?

A. No, sir.

Q. Well, how else could they meet the increased—the increased—or reduction in time schedule that you claim for this proposed unification?

A. Well, Akers Motor Lines, for example, the first carrier on the list, operating directly from New York City to Atlanta, Ga., could, in my opinion—I admit I am not an operating man, but I have tried to observe operating conditions in the motor

306 game. It is very appealing to me. In my opinion they could interchange their equipment with a carrier going beyond and in effect give the same kind of service. Maybe they don't seem to—

Q: In other words, it is possible to interchange equipment between independent carriers?

A: Well—surely, if the equipment is set up—if the equipment is of such character that can be interchanged. I see it in several places. I know it is being done into New England by certain carriers, and I see it in other places. As a matter of fact, our company has interchanged with some of the short lines on one or two occasions because of the specific request by the shippers that they wanted their traffic to move through, and we made arrangements. It isn't—it is not entirely the most satisfactory, especially for a fleet of ours where we have to give the equipment to the other operator. By that I mean, where the other carrier depends on us for the equipment and doesn't have anything to put in a schedule to coordinate with our equipment it makes it kind of unbalanced, but the only place that we ever operated in such a manner was over a couple of little routes in North Carolina, about 20 miles in length, I guess, or maybe one was 30 miles, but it didn't bother us, but they could interchange equipment, I guess, if they really had a desire to do it, or necessity for it.

307 Q: Well, then, the saving of time could be effected by the interchange of equipment between carriers?

A: Yes. Akers Motor Lines—I stick to Akers because it happens to be the No. 1 carrier on our exhibit—but I believe Akers Motor Line at the present time is running traffic through from New England to North Carolina and Georgia as fast as our company can, and we have lost business to that carrier as well as some of the others named here because he has performed faster service. We suffer the same thing on the north end that you are talking about on the south end.

Q: If Akers could do it, Horton could do it, couldn't they?

A: I don't understand what you refer to? Are we talking about the New England area or the Atlanta-Mobile area, and so forth?

Q: What is the southern terminus of Akers? Is that Atlanta?

A: Well, so far as I know it is. I believe that they go beyond that, though, under certain conditions.

Q: Horton also operates to Atlanta, does he not?

A: That is correct; that is our southernmost terminus.

Q: Then, so far as the interchange that you propose for Akers is concerned, would you say it is 36 hours? Horton can do the same thing?

A: Well, from New York through to Atlanta, Ga.?

Q. And through that point of interchange to points south?

A. Well, there is a question there. Our company—our company doesn't have the conventional type of equipment. As you  
308 undoubtedly have heard the testimony, the equipment is built by our subsidiary and built to certain specifications. The fleet isn't of such character as to readily lend itself to the interchange arrangement without the other lines revising their tractor equipment. Now, Akers, for example, has the conventional type of equipment built, I think, some of it by Fruehauf, and the like. I don't believe they would have so much difficulty in interchanging their equipment as we might have.

Q. Well, assuming that that difficulty were overcome, there would be no difference in the problem of interchange, Horton as compared with Akers; would there?

A. I don't know. I might say that it would appear to me not to be, but you would have to understand something about the business of the companies and the manner in which those businesses are conducted. I mean by that our prime object is to get the traffic through. We operate on specified highway routes. We have schedules not necessarily advertised to the public but operating for our own public in order that we might anticipate the arrival and delivery of traffic at the different points.

Q. Well, Mr. Lawson—

A. I don't know whether the carriers beyond down there would coordinate in such a fashion as to make it possible to work it out.  
Of course, if everything were even and equal and the matter of  
309 interchange of equipment was the only thing and that were possible and there was complete agreement on the matter, I suppose one could do as well as the other except that—well, there are other factors entering into it. I think Akers operates sleeper cabs, and so forth, whereas we don't.

Q. If that were the fact, then there would be no need for unification in order to save that 36 hours; would there?

A. Yes; if there was as simple as all that I don't suppose there would be any need for unification, but it certainly would, in my opinion—the operation under one company—it is not only my opinion. I know from experience that we have had in the operation of our equipment in the matter of the short routes that I just mentioned awhile ago it is—it would make a much better operation and give a finer service to the public to have it operated under one—one company or one management. There is something a little more personal attached to the operation of your own equipment over the highway than operating the other fellow's; you know.

Q. Well, speaking of equipment, Mr. Lawson, what would be the equipment which the proposed merged companies would have, assuming that the application is approved?

A. You mean the total amount of equipment?

Q. Yes. You give equipment for these carriers.

A. According to the Exhibit E attached to the application—I believe that is a schedule of the equipment owned and leased by the companies here—I made a computation a few moments ago of the equipment here; and I arrived at these figures: 1,765 complete units.

Q. What do you mean by “complete units”?

A. Well, considering a tractor and a semi-trailer as one unit.

Q. Is that the way you figure the other 4,000?

A. No; I gave you the individual figures on that.

Q. Can you give us the individual figures on Associated Transport?

A. Well, maybe I had better do that under advisement because I made a little computation here that just didn't seem quite right to me.

Exam. BAKER. Doesn't the record speak for itself in that respect?

The WITNESS. I think so, with one exception, Mr. Examiner. I may be wrong at this particular point, but Exhibit E under Barnwell Brothers, Incorporated, shows 10 units leased and under the Barnwell Warehouse & Brokerage Company, and it seems that that figure has been included again; so there would be a minor duplication in that respect, that is right, so that I just deducted the 10 units and made my computation from that for a total of—well, it is set out there. There are 3,162 owned plus 158 units under lease, or a total of 3,310. The first figure is 3,152, it should be.

Q. Is it not a fact, Mr. Lawson, that if this unification is approved that Associated Transport will have a monopoly of long haul transportation on the Atlantic Seaboard so far as motortruck operation is concerned?

A. Generally speaking, no.

Q. Well, what other individual line will be able to compete with it?

A. Well, I have named a number of them for you, sir, and my exhibit sets out quite a number that are doing a pretty good business right now of competing with the same units that are involved in this application.

Q. Well, are you prepared to state for the record what combination of carriers can compete with the unified lines between New Orleans and New York, the New England States?

A. I couldn't give you all of them; no, sir; but there is a substantial number of them; and then, too, I think that you should bear in mind that the traffic isn't all moved between New York and New Orleans. There is a vast amount of traffic moved over these lines that never sees New Orleans, never arrives at New Orleans or even originates there. Get into the Piedmont section of the Carolinas, the textile area down there with traffic moving in both directions, traffic moving out of the Alabama section. I think Mr. Clay testified about some traffic, textiles, moving out of there, and certainly Transportation is by no means the only carrier serving Lenoir. You have got Howard, Hall,

312 and Jack Cole, and other carriers coming right out of that area going to New York and the other eastern territory and hauling the traffic. As a matter of fact, Howard, Hall, and Jack Cole have taken traffic away from Horton Motor Lines within the recent past what we had enjoyed heretofore. It simply—I don't know; service apparently. It was their through operation that took some of that business; there is not anything to prevent them from interchanging traffic to New Orleans. They go to Birmingham. It is one interchange. I don't see anything monopolistic in the arrangement at all. Maybe one or two little points where there would be a merger or a unification of Horton and Barnwell, or Horton and Transportation, but, considering the entire picture and the advantages to the shipping public in this area, I don't think there are any consequential—it does not go to make a monopoly.

Q. But you are not in a position to state the carriers that would afford effective competition to Horton and Associated Transport between New Orleans and New York?

A. Well, as I said, the traffic doesn't move between New Orleans and New York. That is not the bulk of the business. I could develop that information, but I would say this: That I have listed carriers here in my exhibit that will get you all the way from Boston, Mass., to Birmingham, Ala. That is true not into New Orleans, but, so far as the traffic is concerned, as far as the movement of commerce along the eastern seaboard, that

313 gives you a good picture of the denser section; and this isn't all of the motor carriers. I am not prepared to tell you what carriers would constitute a through route from New Orleans to New York, or Boston, Mass., and operate along the route of Associated Transport in the event of a unification here. But my knowledge of the territory, after having spent 5 years in—in the Southeast and in the East handling traffic matters and commerce matters for this company and examining records of competing carriers at formal hearings of their applications,

and so forth, I am confident that there won't be any lack of competition. We won't be able to sit back and get the business without working for it.

Mr. WIPRUD. That is all I have, Mr. Examiner.

Mr. SULLIVAN. May I ask one question?

By Mr. SULLIVAN:

Q. Mr. Lawson, does the Horton Company at the present time, by means of connection or interchange, haul any freight from New York City to New Orleans?

A. Oh, there might be a box now and then of something go down there. It is relatively small in amount.

Q. I mean if it did it would be not more than a few hundred pounds in the course of a year?

A. Not more than that because—well, if the—the traffic just doesn't move that way, Mr. Sullivan.

Q. All right. Now, then, is that the situation *situation* with respect to the Barnwell Company?

A. Oh, surely, definitely so.

314 Q. And do you know whether Southeastern pulls any traffic by interchange, or otherwise, between New York City and New Orleans?

A. Well, they would be in the same position that we are.

Q. As to Horton and Barnwell?

A. See, the business originates—the answer would be the same. There might be some little business, a few shipments or something like that, but in all my study of this traffic situation I don't find it—a great bulk of it going through.

Q. All right. Now, that would also be true of Transportation, the Transportation Company?

A. Oh, surely.

Q. Well, under those circumstances if there is any substantial bulk of traffic being handled between New York and New Orleans somebody other than those concerned here have got the monopoly of it at the present time; isn't that so?

A. Definitely so.

Q. So, if there is any substantial bulk and somebody else has got it at the present time, there is nothing involved in this merger or proposed merger, that is going to interfere with that; would it?

A. I don't see how it possibly could unless they quit.

Q. So, the most that would happen at the present time if this merger were approved would be to break up the monopoly that already exists; is that right?

315 A. It seems to me that is true.

Q. Counsel asked you if there were any motor carriers in the area—perhaps he meant in the southern area or perhaps he

meant all of the area involved in this unification—of a similar size. I don't know what he meant, but I ask you if the Greyhound System doesn't operate throughout the territory of either Horton and Barnwell, or throughout the rest of the territory up in the North; is that right?

A. Oh, yes. Yes.

Q. And their gross revenues are over three times the size of the gross revenue of this proposed unification?

A. Yes.

Q. In other words, some \$55,000,000 a year as opposed to \$20,000,000?

A. Yes, sir.

Mr. WIPRUD. Counsel seems to be testifying here. Is he sworn, Mr. Examiner?

Exam. BAKER. Mr. Sullivan, it would be preferable if you wouldn't lead the witness.

Mr. SULLIVAN. I am through now, so let him lead him.

The WITNESS. I do not know from my examination of the records that the revenues of the Greyhound Corporation is substantial.

Mr. WIPRUD. Is that material to this case?

Exam. BAKER. Well, it is on the record.

Mr. SULLIVAN. I suggest, Mr. Examiner, of course it is.  
316 The Greyhound Corporation is a substantial company. It is a class I motor carrier and from day to day or from month to month it comes in here and asks for rate increases and mergers; I think it is an excellent precedent for this merger except that part of its merger that might be considered monopolistic.

Exam. BAKER. Any further questions?

Mr. WIPRUD. May I ask the witness if he wants the record to show that there is only 200 pounds of freight that moves from New York to New Orleans over this line?

Mr. HORTON. He could easily show that there is none at all and be correct.

Mr. WIPRUD. How about the territory—

Exam. BAKER. Just a moment. Did the witness answer that question?

The WITNESS. No; I was going to.

Mr. WIPRUD. All right.

The WITNESS. I didn't say that there were only 200 pounds, sir. I said if there was any it was a very small, inconsequential amount at the present time, as far as I know. There may be 500 pounds. I doubt it, from New York to New Orleans over our route or over the route of Transportation or Southeastern or Barnwell.

Exam. BAKER. In order to clarify that matter, I might ask Mr. Horton, he has been sworn, to answer from where he is:

317 To your knowledge, does Horton Motor Lines move any traffic over its lines originating at New York and destined to New Orleans?

Mr. HORTON. We do not, sir.

Exam. BAKER. Very well.

By Mr. WIPRUD:

Q. Could you state, Mr. Lawson, for the record, the volume of traffic that moves over the lines of Transportation from Atlanta to New Orleans at the present time that originates north of Charlotte?

A. No; I couldn't, sir. You see, such information as that is personal company information and not available to me as a competitor. I don't believe they would let me have it.

Mr. HORTON. It is available to me, and if you don't mind I will answer the question.

The rate structures under which the companies operate level out over a distance of many, many miles and increase very, very small. They do not increase in proportion to the increase in distance, and it is not profitable to run a truck from New York to New Orleans under any system.

Mr. WIPRUD. I understand from Mr. Lawson that there are some trucks operating from New York to New Orleans.

Mr. HORTON. I don't believe he wished it to be understood in that manner.

Mr. WIPRUD. There would be no operations from New York to New Orleans?

318 Mr. HORTON. I don't think so.

Mr. WIPRUD. Where would the breaking point be, then, for the movement?

Mr. HORTON. The type of equipment we are presently using, it would break undoubtedly at Atlanta. See, there is no feasible and economic way of utilizing the equipment completely that we use north of Atlanta south of Atlanta.

Mr. SULLIVAN. Without making this too much of a round-table discussion, I suggest to you, sir, that your idea of New York and New Orleans came from something that Mr. Seymour said that in these times it might be, because of national defense and shortage of transportation, necessary to run trucks between New York and New Orleans. I believe that was the reference made to it.

Mr. HORTON. It must have been the reference. We contemplate no operation from New York to New Orleans.

Exam. BAKER. Let us take a recess for just five minutes.

(There was a short recess taken.)

Exam. BAKER. Let us resume. Mr. Wiprud hasn't come back yet, has he? We will suspend for a moment.

(There was a short intermission.)

Exam. BAKER. Let us resume.

I have a few questions to ask.

Mr. Woods. I have one or two I would like to ask. Would you rather I wait until after you get through?

319 Exam. BAKER. Suppose you go ahead, Mr. Woods.

By Mr. Woods:

Q. Mr. Lawson, referring to Exhibit 2, the map, I notice between Roanoke and Winchester and particularly a little farther up from Roanoke you indicate the restriction on the Horton rights along that route in your key, and also on the map. In preparing this map did you note that there were any restrictions on the Southeastern rights between Roanoke and the North?

A. Yes. Their rights permit them to pick up traffic at Roanoke for northbound—for northern points, but they haven't—I believe this is correct. They are restricted against the acceptance of shipments at points intermediate to Roanoke and Winchester for Winchester and north thereof.

Q. At any rate, the exact nature of that restriction is indicated by the last compliance order on the Knoxville to New York operation received by the Southeastern Motor Lines on November 29, 1938, which appears in the Commission's dockets; that is right, is it not?

A. Yes, that is right.

Mr. Woods. And I assume, Mr. Examiner, that the Commission will take judicial notice of that last compliance order in its docket.

Exam. BAKER. The Commission will take judicial notice of its own orders.

Mr. Woods. Yes.

320 By Mr. Woods:

Q. Now, with respect to Nashville, I believe you testified on direct examination, Mr. Lawson, that Southeastern operated into the Nashville area, and that Super Service supplied substantial competition in that particular section. Isn't it a fact that Southeastern does not now have either a certificate or a compliance order granting it the right to operate between Nashville and New York or between Nashville and Knoxville?

A. Well, I will answer you by saying this: In a rather cursory examination of the records of the Commission with respect to that part of the Southeastern operation, it disclosed to me they are operating under pending applications. However, I did not make any careful examination of the records with respect to that

phase of their operation because I wasn't concerned with it for the purpose of this exhibit, sir.

Q. Well, even in that cursory examination—

Mr. JOSELOFF. May I interrupt at this moment?

Mr. Brock will take the stand and you can go into that question as to the operating rights between Nashville and—

Mr. WOODS. Will he be on the stand tomorrow?

Mr. JOSELOFF. He will follow Mr. Lawson.

Mr. WOODS. He will follow Mr. Lawson.

That is all.

Exam. BAKER. Mr. Wiprud, did you conclude your examination?

321. Mr. WIPRUD. Yes, Mr. Examiner.

Exam. BAKER. Is there any other cross-examination?

Mr. Lawson, what have you to say with respect to competition via railroads between the points covered by your exhibit?

The WITNESS. I believe, without exceptions, sir, that all the points I have set forth in my exhibit are main line points, are main line points of class I railroads, and that between New York and Atlanta, Ga., practically all of these points are located on rail lines that parallel the highway routes. There may be an exception to that with respect to Richmond, Va. For example, the Southern Railway main line operation is from Washington south through Lynchburg and Danville, Va., into Greensboro, and they have a branch line—it is still a main line, however—extending from Danville to Richmond.

Exam. BAKER. Without going into the detailed operations of the various railroads that serve the territory, can you state whether, as a matter of fact, there is substantial competition existing presently between the motor carriers serving the Middle Atlantic and New England territory, on the one hand, and the Southeastern States, on the other, and railroads serving between those points?

The WITNESS. Oh, definitely, there is; yes, sir. Not only are we competing with the rail and water routes through the Hampton Roads or Norfolk gateway.

Exam. BAKER. Your exhibit does not specify any points  
322 in Pennsylvania other than Philadelphia. I believe there is competition presently existing between Horton Motor Lines and Barnwell Brothers as far as up as Scranton, Pa.?

The WITNESS. Well, there is only a very slight amount of competition there, sir. Horton's operation is restricted as to points north of Baltimore, to Selinsgrove, Pa., which is north of Harrisburg. There is competition as to Wilkes-Barre and Scranton. There are some mill points along the Susquehanna River, such

as Berwick, and places like that, I believe, along the end of that motor route up there that are served by other motor carriers, and I believe I am correct in saying that the competition is not so great between Horton and Barnwell in that area. See, Barnwell has rights to serve Harrisburg, which would be the largest point on that route, whereas Horton does not.

**Exam. BAKER.** Can you state whether or not there are any other motor carriers either included in your list or not included that operate generally from the southern points in the Carolina area to Scranton, Pa.?

**The WITNESS.** There are carriers included in my exhibit that operate there as well as ones that are not included.

**Exam. BAKER.** Does Akers Motor Lines operate between Charlotte and Scranton, Pa.?

**The WITNESS.** Not to my knowledge. However, they have a certificate that will permit them to do it. They don't  
323 operate there. The Atlantic States Motor Lines, Incorporated, operate into the eastern Pennsylvania section. Carolina Freight Carrier Corporation, carrier No. 6 here, I have seen their equipment up in that area on occasions, sir, but I don't know what their service is. The Mason & Dixon Lines operates through there, and of course—

**Exam. BAKER.** How about the Preston Trucking Company? Doesn't it operate there?

**The WITNESS.** Well, I don't know whether they do now, sir, but I have examined records of that company showing that at one time or another they did transport shipments up until—I think it was October of last year, but they don't operate into the South any longer. They at one time did go down there and quit. Roadway Express, Inc., operates up in that section, and they have a subsidiary operation—I perhaps shouldn't call it a subsidiary company, but it is an associated carrier called Shippers Freight Forwarding that operates east and west, that is, from New York to Akron and serves part of the—operates through part of the eastern Pennsylvania section, and I believe that it was—as a matter of fact here with your Commission that those carriers, it is proposed to consolidate their operations or unify them.

**Exam. BAKER.** In order to facilitate the Commission in determining the size of the carriers listed on your Exhibit No. 2,  
may it be stipulated that reference may be made to the  
324 annual reports filed with the Commission by each of the carriers which are included in the exhibit or mentioned in your oral testimony?

Is that agreeable to counsel for the parties?

Mr. SULLIVAN. I wonder if we couldn't have that extended to annual reports of any companies that are referred to in any of the testimony.

Exam. BAKER. What do you have in mind? Including the reports of the carriers involved in this proceeding?

Mr. SULLIVAN. Yes.

Exam. BAKER. I—my request for a stipulation deliberately excluded those companies because I feel it is incumbent upon the applicant to produce the records of the companies here involved while at the same time recognizing that they could not obtain the records of their competitors.

Mr. SULLIVAN. We are very happy to make the stipulation you suggest. I was just wondering if it might be useful to broaden it; that is all.

Exam. BAKER. Is that agreeable to other intervenors? There being no objection, the stipulation will be noted.

Mr. SULLIVAN. Do I understand, Mr. Examiner, that stipulation is restricted to the ones he has referred to here in previous exhibits, or will that be carried on to other witnesses covering other parts of the territory?

Exam. BAKER. The stipulation contemplates that the  
325 reference may be made to any of the reports mentioned in Mr. Lawson's testimony, or in the testimony of other witnesses with respect to competition.

Are there any other questions of this witness?

Mr. SULLIVAN. I would just like to ask him one question.

By Mr. SULLIVAN:

Q. Is there also substantial competition in the territory you have been discussing or parts thereof between the motor carriers concerned in this merger—proposed merger, and various of the carloading companies?

A. Well, the carloading companies do not serve as many of the points in the Southeast as I have set out here in my exhibit.

Q. That wasn't my question. I had a more general question than that.

A. Well, I was going to more specifically answer your question. There is substantial competition with respect to such points as Atlanta, Ga., points in Florida and, I believe, in the Mississippi Valley area. The forwarding companies at one time or another have offered services to different points and for some reason apparently withdrew. For example, they would have forwarding companies that operate in the Greensboro-High Point furniture area, and I believe they confine their activities to furniture in that section, but there is one motor carrier operating, the Akers Motor Lines, the No. 1 carrier on my exhibit here, transports forwarding

326 company traffic to quite a large extent, but from the information that I have been able to develop that transportation is between New York and Atlanta, Ga., Atlanta being a break bulk point, and when I answered your question I had in mind the principal break-bulk points of the forwarding companies. That doesn't mean, however, that Akers, for example, does not transport forwarding traffic to Atlanta and there give it to other motor carriers to take beyond to more distant destination points.

Q. Well, more specifically—I will word my question another way: Do not the forwarding companies, so-called carloading companies, offer service to many of the points involved in the territory you have been discussing either directly or through a combination of the—the part of their haul that they perform by rail and the part of their haul that they perform through trucking companies of one kind or another?

A. There is a substantial forwarding company operation—and when I say “company” I am including all of them that operate—

Q. Well, would you name. Name what carloading companies you are talking about then because we don't know which ones operate there.

A. I have in mind Acme and Universal and their operations—they have substantial operations through the Ohio River gateways from the Central territory, for example, Cleveland, and Chicago, down that way. Now, I don't know that they do transport traffic from New York to Cleveland, for example, and then bring  
327 it through the Ohio gateway. It is entirely feasible of course, but one of the forwarding companies—and I believe that is Acme, uses the Akers Motor Lines in a direct transportation from the East into the southeastern part of the country.

Q. Well, does the Universal Carloading Company, for example, offer service to points south of Philadelphia?

A. From the Southeast to—

Q. Or from the—say New York-Pennsylvania area and New England area, do they offer carloading services—at least, do they purport to hold out to the public tariffs covering shipments to points to North Carolina, South Carolina, Virginia, Georgia, some of those States? That is what I am driving at.

A. No, to my knowledge they do not hold out such broad operations as that.

Q. At all, I mean? Do they have any service down in that territory?

A. They have some service in that territory, but it is not as broad as up in the eastern territory, for example.

Q. I hadn't asked that, but leave it that way.

Exam. BAKER. Are there any other questions of this witness?

The witness is excused.

(Witness excused.)

Mr. COCHRAN. Mr. Examiner, Mr. Sutton tells me that he has just one statement he wants to make in correcting the impression as to his testimony about Brown.

328 Exam. BAKER. First, do you wish to offer Exhibit 2?

Mr. COCHRAN. Yes, I do. Excuse me.

Exam. BAKER. Exhibit No. 2 will be received in evidence.

(Exhibit No. 2, witness Lawson, received in evidence.)

Exam. BAKER. Now, Mr. Sutton.

Mr. COCHRAN. Mr. Sutton, you can make the statement if you wish to stand there.

J. A. SUTTON resumed the stand and testified further as follows:

#### DIRECT EXAMINATION

The WITNESS. In December of 1938 bids were asked for Horton's requirements of the type that were obtained from Brown Manufacturing & Equipment Company. When you showed me the exhibit—that is a long time in this motor carrier business. Things move very fast and for a moment I was doubtful of it, but they were. Bids were asked of various companies.

Mr. COCHRAN. Is that all you have?

The WITNESS. That is all.

Exam. BAKER. Do you have any questions?

Witness is excused.

(Witness excused.)

Exam. BAKER. Next Witness.

Mr. COCHRAN. Mr. Brock.

329 CLIFFORD C. BROCK, being first duly sworn, testified as follows:

Direct examination by Mr. JOSELOFF:

Q. Your address, Mr. Brock?

A. Columbia Road, Bristol, Tenn.

Q. Will you state your position and duties with respect to Southeastern Motor Lines, Incorporated?

A. President and general manager.

Q. And you have been in that position for some time?

A. Since the latter part of March, 1938.

Q. I ask you whether or not the date of incorporation of Southeastern Motor Lines, Incorporated, was February 9, 1938.

A. That is correct.

Q. Will you describe briefly the history and background of Southeastern Motor Lines.

A. Southeastern Motor Lines acquired through purchase from the trustee in bankruptcy Hoover Lines, Incorporated, the operating rights and properties, franchise, in March, 1938; began operation—and at the time they began operation the monthly revenue amounted to only ten or twelve thousand dollars a month. It increased considerably during the year 1938, the balance of the year 1938, until approximately a revenue of \$20,000 per month was reached at the end of the year.

Q. Now, did Southeastern subsequently acquire another company in May of 1939?

330 A. Yes; they acquired through purchase in May of 1939 and began operation in December of that year the operating properties and franchise of Spencer Miller, doing business as Boone Transfer Company.

Q. And those acquisitions, together with its own business, explain the history and growth of the company to date?

A. That is right.

Q. Now, I ask you whether or not there have been any amendments to the charter of Southeastern Motor Lines since July 15, 1940, which was the date of the hearing in Docket No. MC-1223, 1244, and 1264?

A. There have been none.

Q. Southeastern is a carrier of commodities generally?

A. General commodities, yes.

Q. Now, then, will you state for the record generally the status of its rights, operating rights?

A. Southeastern operates—operates principally between Nashville, Tenn., and New York City, and between Nashville, Tenn., and Winston-Salem, N. C.

Q. And more specifically, do you have a reference to the I. C. C. docket numbers descriptive of its rights?

A. They are more thoroughly defined in Compliance Order of the Commission dated November 29, 1938.

Q. That would be Docket No. MC-60451 and Sub. Nos. 1 through 3?

331 A. Sub. No. 3 will give a more complete description of the operating rights of Southeastern.

Q. But in any event those operating rights are on file in the records of the Commission?

A. That is correct.

Q. You wish the Commission to take judicial notice of those rights for the purposes of this hearing?

A. That is right.

Q. Now, then, there was some question with the previous witness as to the status of the operating rights of Southeastern between Nashville, Tenn., and New York. Will you state what that situation is, please?

A. A hearing has been held before an Examiner on that application, and it is still pending before the Commission.

Q. Has Southeastern received an order from the Commission by a Division or by the full Commission?

A. It has not, not on the operating rights covered by the application—application for rights between Knoxville and Nashville, covering that section of it.

Q. Between Nashville and New York City—

A. Yes.

Q. Is what I had in mind.

Now, what can you tell us about the intrastate rights of Southeastern?

A. Southeastern operates intrastate only in one State, that being North Carolina, and about three-fourths of our intrastate rights in that section is covered by intrastate authority issued by the Utilities Commission of the State of North Carolina.

Q. Is that a relatively small amount as compared with your entire interstate business?

A. Yes, very small, sir, percentagewise in revenue; I think it is 1.55.

Q. Do you have figures available showing the tonnage handled by Southeastern during the year 1940 and the first six months of 1941?

A. Total tonnage handled by Southeastern for the year 1940, 48,460,255 pounds. For the first six months of 1941, 34,629,247 pounds.

Q. What is your estimate as to the tonnage for the entire year 1941?

A. Run close to 80,000,000.

Q. Now, of that tonnage, what percentage would you say was so-called interchange freight?

A. I am sorry, I do not have the correct percentage figures on that, but I would say over 50 percent, probably 60 percent.

Q. Now, then, of that percentage what percentage would you say is interchanged with carriers in the present or proposed unification?

A. Fifteen to eighteen percent.

332 EXAM. BAKER. Do you mean 15 percent of the 60 percent?

THE WITNESS. That is right; 15 to 18 percent of our total interchange business.

Q. Now, in your opinion, would there be any substantial diversion of tonnage from those carriers not in the proposed unification?

cation to those carriers in the proposed unification, if this application be approved?

A. No, I don't see where there would be any material change whatever, because the—

Q. Will you state your reasons, please?

A. The principal points that we interchange with carriers now outside the unification are points which are not served by the carriers inside the unification. In addition to that, a large percentage of traffic now moving is shipper routed, and the carrier has no authority to change the routing, or at least we do not.

Q. And would you continue to follow that policy?

A. We would follow the shipper's routing.

Q. What can you tell us about interchange business moving from points in the territory served by your lines to points and places in New England?

A. We have a very substantial amount of traffic moving into the New England territory.

Q. And do you also receive a substantial amount of tonnage?

A. We receive traffic from the New England territory moving to points in the South, Southwest.

Q. In your opinion, would this proposed unification redound to the benefit of the shippers of this traffic?

A. Unquestionably so.

Q. In what respect?

A. Considerable time could be saved in the handling of traffic where we are now interchanging it at Philadelphia and New York for upstate New York and New England territory. Traffic arriving in New York usually late in the afternoon, too late for handling and delivery to the connecting carrier that afternoon, whereby it is not handled until the following day. That could be eliminated. There would be a saving there of from 12 to 24 hours on traffic moving into upstate New York and New England.

Q. What carriers are you interchanging with now for New England points?

A. Principally Consolidated; Consolidated Motor Lines.

Q. Would there be any diversion of your interchange, then, in so far as New England is concerned, from companies not members of this proposed unification if the proposed unification were to be approved by the Commission?

The WITNESS. Will you read that question again?

(Question read.)

Q. If you don't understand that, I will reframe that question, Mr. Brock.

335 A. If you will.

Q. I will be glad to.

A. If you will reframe it, it will probably make it easier.

Q. The question is withdrawn.

If the proposed unification were to be approved by the Commission would there result, in so far as New England business is concerned, any diversion of freight from carriers not in the proposed unification to carriers in the proposed unification?

A. Not any substantial amount, certainly not. As I stated a little bit ago—

Q. I just wanted to have you repeat that for emphasis. I believe you stated the same thing a minute ago in a general way.

A. Yes, there would be no diversion to speak of.

Q. Now, then, would the same situation apply so far as service into and from New York State points?

A. Yes, the same would apply there.

Q. Now, will you develop for the record, please, the terminals of Southeastern from the standpoint of the number and adequacy?

A. Southeastern maintains seven terminals located in New York, Roanoke, Bristol, Knoxville, Boone, and Winston-Salem.

336 Q. Will you comment as to the adequacy of these terminals at the present time?

A. I cannot say that any of our terminals are adequate for the handling of traffic, the volume which we are now handling and which is continuing to increase month by month with the exception of one located at Boone, N. C.

Q. Now, then, do you see any benefit that will result, so far as these operations of these terminals are concerned, if the proposed acquisition be approved?

A. Yes, I think we should have much better terminal facilities. We would have finances to construct terminal facilities suitable for our business.

Q. With regard to your Bristol terminal, do you wish to make special comment, for the record—Bristol, Va.?

A. We have recently enlarged our Bristol office and terminal, and even with the enlargements we do not now have sufficient terminal facilities or office space.

Q. You heard Mr. Horion testify, Mr. Brock, concerning the—

EXAM. BAKER. Mr. Joseloff, will you keep your voice up just a little bit louder, please?

Mr. JOSELOFF. Yes, I will be glad to.

By Mr. JOSELOFF:

Q. You heard Mr. Horton testify, Mr. Brock, with regard to the situation in certain territories on terminals, that it would be possible to consolidate the operations of some of the companies in certain areas from two terminals to one terminal and  
337 that would afford also the further opportunity to open up a new terminal at another nearby point, which at the present time has no terminal. Would that situation apply to any points served by Southeastern?

A. Yes.

Q. And can you name, for illustration, a representative point where that might take place?

A. It would apply to New York City, Bristol, and Winston-Salem, N. C.; and Knoxville, Tenn.

Q. What I have in mind specifically is, do you have a point where the terminals might be consolidated and also in mind an adjacent or nearby community not now serviced by a terminal which could be serviced to advantage?

A. Yes; by consolidation of terminals at Knoxville we could install a terminal at Kingsport or Johnson City, Tenn.

Q. And, in your opinion as an operator, would it be advantageous for service to the public to do something of that sort?

A. Very definitely so.

Q. Now, will you explain for the record the maintenance set-up and operations of Southeastern?

A. Southeastern maintains its own shop at our own terminal, Bristol, Va., doing practically all of our repair work, including motor overhauling. However, we do not have as well a trained  
338 personnel and equipment as we should like to have for that work.

Q. Do you see any advantages to be derived to Southeastern insofar as the maintenance and servicing of its equipment with the introduction of centralized maintenance shops or more scientific and more highly developed maintenance set-ups?

A. Yes. With centralized and well located maintenance shops it would reduce to a large extent the road failures which we now have in the operation.

Q. Do you see a need for additional maintenance shops in the territory served by Southeastern?

A. You mean other than the ones we have now?

Q. Other than the ones you have now.

A. Yes, sir.

Q. I ask you whether or not the Southeastern operations are adequately covered by all kinds of insurance, and, if so, are they above the requirements of the Interstate Commerce Commission?

A. That is correct.

Exam. BAKER. Which is correct, Mr. Brock, they are above the requirements?

The WITNESS. Yes, sir.

Q. And all kinds required by the Commission are maintained?

A. That is true, and in connection with that I think there is an error on the exhibit of property damage insurance.

Q. That isn't specifically set forth on your exhibit?

339 A. It isn't.

Q. It is just covered by a general statement that it is adequately covered by insurance.

Now, with regard to the contract of the stockholders of Southeastern, of Associated Transport, dated June 11, 1941, is the main body of that contract substantially the same as the Horton contract identified as Exhibit C-1 in this application?

A. It is.

Q. And are the differences set forth as indicated in Exhibit C-1-B of this application?

A. Yes.

Q. Is 100 percent of the stock of Southeastern being exchanged for stock of Associated Transport?

A. Yes, sir.

Q. I believe the other items are self-explanatory as set forth in the exhibit. I will not question you on them, Mr. Brock.

A. Yes.

Q. Now, you heard Mr. Horton and Mr. Seymour testify as to the benefits to be derived from the proposed unification to the public, to the shippers, and to the companies involved.

A. I did.

Q. You were here during their testimony?

A. Yes, sir.

Q. During all of it?

340 A. I was here during all of the testimony with reference to the benefits to shippers.

Q. And were you here during the testimony with regard to benefits to the respective companies—

A. Yes.

Q. Economies to be—

A. Yes, sir.

Q. Effected? And I ask you whether or not you concur in those statements.

A. I do.

Q. And generally whether or not the proposed unification would result in a better service at a lower cost.

A. Definitely.

**EXAM. BAKER.** Mr. Brock, by lower cost do you refer to lower cost to the operating companies or lower rates to the public? What do you have in mind?

**THE WITNESS.** Lower cost to the operating companies automatically eventually finds its way back to the shipping public.

**Q.** And would this be true, Mr. Brock: That in view of increasing costs on industry in general—in view of these times, increased taxes and increased price of materials and purchases, that the tendency towards lower cost would at least take up the  
341 slack or help take up the slack between those other costs?

**A.** It would at least serve as a cushion.

**Q.** And do you recognize in that an important benefit here to the companies and the public?

**A.** Yes.

**Q.** Could you comment for a bit, please, on the benefit of additional and strong financial resources of the Associated Transport so far as Southeastern is concerned with regard to particular working capital, additional cash that Southeastern would require or could use?

**A.** We do not now have and have never had the desired working capital that our company should have. Through the unification, I believe that the capital would be made available sufficient to meet our demands.

**Q.** In your opinion, how much additional cash would Southeastern need for adequate working capital?

**A.** Roughly a hundred thousand dollars; that is, to liquidate the bank loans which Southeastern now owes and to supply the equipment which we need at this time or anticipate needing in the very near future. Taking into consideration terminal—adequate terminal sufficient, it would take in excess of a hundred thousand dollars.

**Q.** Now, then, have you some estimate as to how much additional would be needed, not so much working capital, but for improvement of terminal facilities and the purchase of additional equipment?  
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**A.** Roughly \$75,000.

**Q.** Is Southeastern in a position to do that today?

**A.** No, sir.

**Q.** Now, I will ask you to look at the map which indicates generally the territory serviced by Southeastern, and ask you, first, whether or not the operations of Southeastern are competitive with the operations of any of the members of the proposed unification?

**A.** Speaking competitively; no.

**Q.** In other words—well, would you mind elaborating on that statement with particular regard to the rights that Southeastern

has from points and places below Roanoke, Va., to points and places above it?

A. Well, we do not come into direct competition with any of the other carriers involved in this application south of Roanoke, Va., on traffic moving into the eastern territory.

Q. And by "eastern," you mean territory really northeast of Roanoke, Va.?

A. Yes.

Q. And why is that?

Q. Well, they are not in a position to really render the service that we do.

Q. What I mean to ask by that, or to have you state by that question, was the rights of Southeastern to pick up  
343 from points south of Roanoke for delivery to points north of Roanoke, Va., and the converse rights only to pick up from points north of Roanoke, Va., to deliver to points south of Roanoke, Va. Is that a correct explanation of the rights of Southeastern?

A. That—that is correct, on points east of Roanoke, Southeastern does not have the right to pick up and deliver freight—pick up freight east of Roanoke for delivery east of Roanoke, or to pick up freight westbound east of Roanoke for delivery east of Roanoke. Below Roanoke we are—

Q. When you talk about "east of Roanoke," you really mean northeast, do you not?

A. Yes; northeast.

Q. May I have that map, please?

A. Below Roanoke we are unrestricted, except between Knoxville and Nashville, Tenn.

Q. In other words, Southeastern could not pick up a shipment, for example, for delivery between Richmond, Va., and New York City?

A. That is correct.

Q. Or between Washington and New York City?

A. That is correct; we cannot handle that type of traffic.

Q. Because those are the points lying northeast of Roanoke, but Southeastern could deliver between Bristol and Richmond, Va.?

344 A. That is right.

Q. And between Bristol—

A. Through interchange, we, of course, do not make Richmond direct.

Q. And between Bristol and New York City Southeastern could handle that?

A. That is correct.

Q. Or between Bristol and Washington, D. C.; is that correct?

A. That is right. In other words, we cannot pick up between, say, Winchester, Va., and deliver the same traffic in Washington, Baltimore, Philadelphia, New York.

Q. Well, then, under that situation do you see any restriction or elimination or even a tendency towards elimination of competition with—in so far as the members of the proposed unification are concerned?

A. In that connection there are no competition today between the members of the proposed unification and ourselves in that territory.

Q. And the exact competition that exists today would remain; is that correct?

A. That would be true; yes.

Q. Were you present while Mr. Lawson was testifying and introduced Exhibit 2 indicating competition remaining in so far as the southern carriers are concerned, of which Southeastern was one?

345 A. I was.

Q. I ask you whether or not that exhibit correctly represents the situation in so far as Southeastern is concerned, showing you Exhibit 2?

A. This exhibit does not set forth the competition offered Southeastern by the Hoover Truck Company, Hoover Motor Express, Dixie, Ohio Express, and the Silver Fleet Motor Express.

Q. What type of operations or companies are those four last mentioned?

A. They are very substantial carriers, very large carriers.

Q. So that, in addition to what is set forth in this exhibit, you also wish to have these other carriers added or—for the record; is that correct?

A. Yes.

Exam. BAKER. Do any of those carriers operate to the eastern seaboard?

The WITNESS. Not directly. They all handle traffic to the eastern seaboard.

Q. Now, then, in addition to the carriers set up in Exhibit 2 and those that you mentioned, are there others—other carriers as well but too numerous to mention, perhaps?

A. I don't recall others right at the present time.

Exam. BAKER. Did you mention Super Service Motor Freight Lines?

346 The WITNESS. No, sir; I did not. I mentioned Silver Fleet Motor Express.

Exam. BAKER. Are the Super Service Motor Freight Lines a competitor of Southeastern?

The WITNESS. Yes, sir.

Exam. BAKER. Where do they operate?

The WITNESS. Legally, between Philadelphia and Nashville, Tenn. They are operating into New York.

Exam. BAKER. Do they generally serve the intermediate points?

The WITNESS. Yes; they serve intermediate points. I believe they are unrestricted entirely between Philadelphia and Nashville, Tenn.

Mr. WOODS. That is co'rect, Mr. Examiner.

Exam. BAKER. I am sorry to interrupt, Mr. Joseloff. Go ahead.

Mr. JOSELOFF. That is perfectly all right, Mr. Examiner.

By Mr. JOSELOFF:

Q. I ask you whether or not, in addition to Super Service, other carriers between Bristol and Philadelphia would be Mason and Dixon Lines and Wilson Freight Forwarding Company?

A. Mundy Motor Lines in addition.

Q. What is the answer to my first question?

A. Mason & Dixon Lines. I do not recall Wilson Freight Forwarding Company.

347 Q. And between such points, for example, as Bristol and Winchester, whether or not they are also serviced by Super Service?

A. Super Service, Mason & Dixon, and Mundy Motor Lines serve that territory between Bristol and Winchester, then from Roanoke into Winchester and as far as Baltimore, we have Red Lines, Incorporated.

Q. Does W. H. Tompkins Company serve that territory?

A. They serve as far as Roanoke, Va., as far east as Roanoke over that road.

Q. Now, you are a director of Associated Transport, are you not, Mr. Brock?

A. Yes, sir.

Q. You are also aware and as a director are acquainted with negotiations that have been made with Associated Transport by companies other than the companies set forth in this application?

A. Yes.

Q. And whether or not such—state whether or not any negotiations or discussions were had with Super Service—

Exam. BAKER. Don't answer that. I don't believe that is relevant, Mr. Joseloff.

Mr. JOSELOFF. I will withdraw that question.

By Mr. JOSELOFF:

348 Q. Mr. Brock, will you state generally what your reasons are for Southeastern, the stockholders of Southeastern, joining in this proposed unification?

A. Gives a much better opportunity to serve the public much more efficiently; much more capable through the increased financial set-up that we will have in the unification. It will broaden the territory coverage considerably.

Q. How do you consider the future and stability of the business of the motor carrier industry particularly with reference to your own company as a basis for your reasons in joining with this group?

The WITNESS. Mr. Reporter, will you read that question?

(Question read.)

Mr. JOSELOFF. If that isn't clear, I will rephrase that question, Mr. Brock.

The WITNESS. If you will.

By Mr. JOSELOFF:

Q. Do you see anything in the future trend of business, so far as motor carriers are concerned, that would in any way motivate your reason for joining in with the other companies in this proposed unification, any tendency in the future, or any uncertainty in the future that would at all influence your judgment in joining?

A. Definitely so; in joining in the unification they would get the advantage of the knowledge of some of the best operators in the industry today.

Q. Do you see it as a safeguard in the event a turn in business would take place and business drop off?

349 A. Yes. I think we would be in a much better position to protect our financial interests than we are today.

Q. What would its effect be on the ability of Southeastern to render service to the public?

A. We would be in a much better position to render service.

Mr. JOSELOFF. That is all I have.

Exam. BAKER. Any cross-examination?

Cross-examination by Mr. Woods:

Q. Mr. BROCK, is it correct to say about this restriction that you cannot pick up anything between Roanoke or New York either going north or coming south out of Roanoke?

A. We pick up at Roanoke and every point east thereof.

Q. Let me put it differently. Going out of Roanoke towards New York, can you pick up any new freight under your restriction?

A. Not for delivery east of Roanoke.

Q. Well, can you pick up any freight at all for delivery?

A. Southbound.

Q. Going out of Roanoke to New York?

A. You could pick it up on a northbound run.

Q. You could pick it up on a northbound run and bring it all the way back down south; is that it?

A. You wouldn't necessarily have to haul it in; no.

Q. Does that same restriction apply coming out of Roanoke south or southwest?

350 A. Yes; we cannot pick up in New York or south of New York for delivery east of Roanoke.

Q. Q. By "delivery east of Roanoke," you mean northeast of Roanoke, do you not?

A. Northeast; yes.

Q. Now, can you give us an estimate—or let me put it differently. Let me put it this way: Doesn't the bulk of your freight for transportation northeast or north originate at Nashville either by interchange or originate at Nashville?

A. No.

Q. Where does the bulk of your freight originate? I am talking about going northeast.

A. Northeast of Roanoke?

Q. Yes. No; I am talking about northeast. That is, your freight that is bound north on your lines.

A. The principal part of it—or, rather, the largest percentage originates in the territory of Bristol and surrounding territories.

Q. You mean Johnson City, Kingsport, and Bristol?

A. That is Bristol, Knoxville.

Q. Do you have any figures on that?

A. As to the break-down between terminals?

Q. Yes.

A. No; I have no figures on it.

351 Q. You do have your interchange figures at Nashville, don't you?

A. No; I do not have interchange figures at Nashville.

Q. You have some records showing the amount of interchange freight at Nashville, don't you?

Mr. JOSELOFF. Interchange for where, Mr. Woods?

Q. I mean freight picked up at Nashville for other parts south of Nashville or west of Nashville which is bound north on South-eastern's line?

A. I do not have those figures available.

Q. Can you give us an estimate of about what they show in tonnage?

A. Of interchange freight?

Q. Yes.

A. For the first six months of this year, I would say, roughly, 2,000,000 pounds.

Q. That is 2,000,000 pounds out of a total of 34,000,000 representing the total freight in the first six months of 1941; is that right?

A. Yes; that is, originating—or, rather, being interchanged at Nashville moving northbound; that is right. Is that the—your question, does that answer it fully?

Q. Yes, sir; that was the question.

Now, I believe you also stated on direct examination, Mr. Brock, that your right to operate between Nashville and New  
352 York or between Nashville and Knoxville—it is the same thing—is now pending before the Commission pursuant to an application that you filed some time ago; is that correct?

A. That is correct.

Q. Now, as a matter of fact, hasn't the Commission on two previous occasions denied you that authority?

Mr. JOSELOFF. Mr. Examiner, I think all of that information is in the Commission's files and the Commission can take judicial notice of it without repeating all of that information for the record.

Exam. BAKER. Do you object?

Mr. JOSELOFF. Yes; I object.

Exam. BAKER. Objection sustained.

Mr. WOODS. Just one other question on that.

By Mr. WOODS:

Q. As a matter of fact, Mr. Brock—you will probably have an objection on this, too—at the present time there is an Examiner's report outstanding on that application dated March 12, 1940, which is adverse—

A. I am not sure—

Mr. JOSELOFF. Just a minute, Mr. Brock, before you answer. I object to that question for the same reason, Mr. Examiner.

Exam. BAKER. Sustained.

Mr. WOODS. That is all.

Exam. BAKER. Any further cross-examination?

353 Mr. WIPRUD. Yes.

By Mr. WIPRUD:

Q. Southeastern is a going concern, isn't it, Mr. Brock?

A. Yes, sir.

Q. Has it enjoyed an increase in business over the past several years spoken of here by the previous witness?

A. Since its inception it has enjoyed an increase in business.

Q. And if this unification were not approved it would continue to do business, would it not?

A. I think so; yes, sir.

Q. Referring to the interchange points of Southeastern, can you name any points, Mr. Brock, where Southeastern interchanges with another company party to this proceeding and an independent company?

A. Name a point where we interchange with a party, party to this proceeding, and one who is not a party to this proceeding.

Q. That is right.

Mr. JOSELOFF. You may have the map in front of you, if that will help you, Mr. Brock.

A. New York City.

Q. Any other point?

A. Yes. Winston-Salem, N. C., Philadelphia.

Q. Are those all?

A. As I understood your question, you wanted one point,  
354 I will go over this map and see if I can't aid you by giving you all of them.

Q. I think that will suffice for the purpose of this question.

Assuming that the unification were approved, what, in your opinion, would be the situation insofar as interchange with the independent is concerned?

A. I don't think it would effect it at all; in very few cases, if any.

Q. Wouldn't the tendency be to route the traffic insofar as the carrier can route the traffic, over the unified lines?

A. In our present position, a large percentage of the traffic that we are now interchanging with carriers outside the unification could not be made by those inside; and a large percentage of the traffic is shipper routed, which we do not control the routing of.

Q. Yes; I understand, but to the extent you can control it, it would logically go over the unified lines; wouldn't it?

A. Yes; to that percentage that you can control it.

Q. Speaking of the elimination of interchange, that is an important part insofar as the considerations involved—the public consideration is involved in this unification is it not?

A. I don't believe I get the meaning of that.

Exam. BAKER. Will you keep your voice up, Mr. Brock? What was your answer?

355 The WITNESS. I say, I don't believe I get his meaning of that.

Mr. WIRUD. Should I—I will restate the question.

By Mr. WIRUD:

Q. One of the advantages claimed for this unification is the elimination of interchange; isn't it?

A. Yes, that would be a very definite advantage to the shipping public.

Q. And to that extent, then, it would afford a substantial advantage to Associated over any combination of independent carriers?

A. Not any more so than an individual company has today over—for example, today we operate direct from Nashville to New York. We certainly have some advantage over our competition, certain of it who do not operate direct but through interchange.

Q. Then it is a substantial advantage over any combination of carriers between given points?

A. It would be some advantage, possibly.

Q. Is it your opinion that if this unification is approved that the Associated Transport would be the largest carrier in this entire area?

Mr. SULLIVAN. Excuse me. Does counsel mean the southern area where he operates, or are we talking about the whole picture?

Mr. WIPRUD. Talking about the whole picture.

356 A. You mean the territory involved in this application?

Q. That is right. That is right. There would be no other single carrier, Mr. Brock, that would be comparable in size; would there?

A. In size it would be the largest; yes.

Exam. BAKER. Mr. Brock, wouldn't it be the largest truck operator in the United States?

The WITNESS. Mr. Examiner, I don't know just how large some of these others are.

By Mr. WIPRUD:

Q. Do you believe that the approval of this application would lead to other and further unifications of a similar size?

A. I would see no reason why there shouldn't be.

Q. There is no proposal here, is there, Mr. Brock, to reduce rates—

A. No, sir.

Q. As a result of the economies that are claimed to be effected? You are a member of the board of directors of the Associated Transport?

A. Yes, sir.

Q. Mr. J. S. Arnold is a member of the board of that organization?

A. Yes, sir.

Q. Is he connected with Kuhn, Loeb & Company?

A. Yes, sir.

357 Mr. WIPRUD. I believe that is all I have, Mr. Examiner.

Exam. BAKER. Any further questions?

Mr. SULLIVAN. The question of Mr. Brock as to whether or not there would be another merger in size similar to this would be a matter that would be definitely within the control of the persons involved plus the Interstate Commerce Commission.

The WITNESS. Yes; I only answered that question in this manner: That I saw no reason why there should not be.

By Mr. SULLIVAN:

Q. You mean the Interstate Commerce Commission is the only reason why there should not be? How about the Department of Justice?

Exam. BAKER. Strike that, Mr. Reporter.

Q. And are you familiar at all with the operations of the Delaware Corporation whose stock is listed—or is traded over the counter on the Exchange known as the United States Truck Lines of Delaware?

A. No; I am not.

Q. You wouldn't know what their size or their current volume is?

A. No. As I stated, I am not familiar with several of the larger truck operations in the middle western section of the country.

Mr. SULLIVAN. That is all.

Mr. WIPRUD. That is all.

358 Exam. BAKER. Any further? Witness is excused.  
(Witness excused.)

Exam. BAKER. We will adjourn until 9:30 a. m., tomorrow morning.

(Whereupon, at 5:30 o'clock p. m., August 19, 1941, the hearing was adjourned.)

359 Before the Interstate Commerce Commission

Docket No. MC-F-1612.

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION ET AL.

Docket No. MC-F-1613.

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

HEARING ROOM "B,"

I. C. C. BUILDING,

Washington, D. C., Wednesday, August 20, 1941.

Met, pursuant to adjournment, at 9:30 a. m.

Before Vernon V. Baker, Examiner.

Appearances: (The same as heretofore noted.)

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## PROCEEDINGS

Exam. BAKER. Come to order, please. You may proceed.

Mr. JOSELOFF. Mr. Arbour, will you take the stand, please.

EVERETT J. ARBOUR, being first duly sworn, testified as follows:

Direct examination by Mr. JOSELOFF:

Q. Mr. Arbour, will you give your full name and address to the Reporter?

A. Everett J. Arbour, 1179 Main Street, Hartford, Conn.

Q. Will you state your position and duties with regard to the Consolidated Motor Lines, and subsidiary companies?

A. I am chairman of the board of Consolidated Motor Lines of Connecticut, treasurer of the United Arbour Express, treasurer of the Consolidated Motor Lines of Massachusetts, and president of United Sales & Manufacturing Company.

Q. Will you state for the record the dates of incorporation of the Consolidated Motor Lines, Inc., and the subsidiary companies?

A. The Consolidated Motor Lines of Connecticut, 4-28-30; United Arbour, 4-6-29; Consolidated of Massachusetts, 2-13-35; United Sales, 6-6-29.

Q. Will you also give a list of the stockholders of the subsidiary companies of Consolidated Motor Lines?

A. The stockholders of the Consolidated Motor Lines of  
362 Massachusetts and the United Arbour Express and the United Sales & Manufacturing Company are the same as the Consolidated Motor Lines of Connecticut, with the exception of directors' qualifying shares.

Q. In other words, those subsidiaries are wholly owned by the parent company, except for the statutory requirements for directors' qualifying shares?

A. That is correct.

Exam. BAKER. Is the parent company the beneficial owner of the directors' shares?

The WITNESS. I believe it is. Yes; it is.

By Mr. JOSELOFF:

Q. Now, will you tell us briefly the business of the United Arbour Express.

A. The United Arbour Express is a contract carrier operating within the State of Connecticut, and has the right to handle chain-store merchandise to points within that State and so listed in their permit.

Q. If this application be approved, is it agreed that the contract operations of United Arbour Express be discontinued and

any requisite permission therefor be filed with the Interstate Commerce Commission?

A. It is agreed.

Q. Now, will you state the business of Consolidated Motor Lines of Massachusetts?

A. Consolidated Motor Lines of Massachusetts is a non-operating company, for the purpose of holding title to the Massachusetts registered vehicles.

Q. Will you explain the purpose of that, by giving for the record an illustration?

A. Its purpose is to take advantage of the reciprocal agreement between States on registration. For instance, the Connecticut corporation has a very large operation in the State of Massachusetts, which enters into New York, Pennsylvania, and Jersey. If it were to register those vehicles in Massachusetts, where they are domiciled, in New York State, they would not be extended the reciprocity that a Massachusetts corporation would receive, and therefore the Massachusetts corporation registers its vehicles, and they are not a foreign corporation going into New York State particularly, where we had difficulty, to start with.

Q. Aside from the purpose, then, of merely holding legal title to the vehicles registered in Massachusetts, does the Consolidated Motor Lines of Massachusetts serve any other function?

A. It does not.

Q. Will you state the business of United Sales & Manufacturing Company?

A. The United Sales & Manufacturing Company before the purchase of same by Consolidated was known as the Loro Tire Service. This company had been doing our tire repair work, furnishing us with tires and some accessories.

364 In May of 1939, we purchased the Loro Tire Service and changed its name to United Sales & Manufacturing. Since that time the company has continued to handle our tire repairs and to sell to us tires and accessories. The purchase really was the taking over of Loro's equipment. The company was in such shape that we just took over its equipment and carried on the business on the basis that I have explained.

Q. Now, is the business of United Sales & Manufacturing Company practically entirely with the parent company, the Consolidated Motor Lines?

A. Almost in its entirety. Very little of it is done with the outside, and of that little that is done, in most cases it is done by the employees of the company.

Q. Could you state roughly what percentage is done with the outside?

A. Well, I think the best example is that in 1941, for the first six months of this year, one percent was done on the outside.

Q. And of that, how much would you say was with the employees of Consolidated?

A. Almost entirely, if not entirely.

Q. Now, have there been any amendments to the charter of Consolidated Motor Lines, or its wholly owned subsidiaries since the date of the hearings before this Commission in Docket Nos. MC-1223, 1244, and 1264?

365 A. There have not.

Q. Will you describe briefly the extent of the participation of Phoenix Securities Corporation in Consolidated Motor Lines?

A. The Phoenix Securities Corporation are the holders of, I think, exactly 33.8 percent of Consolidated Motor Lines' stock. This was purchased, I believe, back in 1936, and some additional in 1937, at the time of the Simpson acquisition. They are represented on the board by three directors, the board consisting of nine directors.

Q. Are they, in every sense of the word, a minority stockholder in the Consolidated Motor Lines?

A. They are.

Q. Mr. Arbour, at the previous hearing in the docket numbers to which I have just referred, the outstanding capital stock of Consolidated Motor Lines was set forth as 2,289 shares. At the present time, its set-up has 2,199 shares, a difference of 90 shares. Will you explain how that difference is accounted for?

A. Yes, sir. Ninety shares were held by a stockholder Frank T. Frey and his wife, I believe. These shares were purchased by the company and canceled.

Q. Now, will you describe briefly the history of Consolidated Motor Lines?

366 A. The Consolidated Motor Lines is the result of an operation that was started in 1907 by my father, Joseph Arbour. He started with a horse and wagon, and it has continued to grow on, until this time, by its own natural growth and acquisitions and mergers, the first of which took place in 1930, at which time the name was changed from Joseph Arbour & Son to the present name, Consolidated Motor Lines, Inc.; a second merger occurred in 1932, and one, I believe, in 1933, and the final merger was in 1937, the acquisition of the Simpson Transportation Lines, Norman Thompson Transportation, and Ralph's Motor Express, which were approved by the Commission.

Q. Now, will you state briefly the nature of the business of Consolidated and its territorial limits?

A. The Consolidated Motor Lines is a common carrier of general commodities, with the usual exceptions. Its general territory is a sort of a triangle between Boston, Buffalo, and Philadelphia and most of the intermediate points.

Q. Now, what is the status of its certificate with the Interstate Commerce Commission?

A. It received its final certificate. It was granted 5-26-41, MC-18159.

Q. And that contains a complete description of the route and operating rights of the Consolidated?

A. That is right.

Q. Now, in addition to its interstate rights, would you state generally for the record the intrastate rights?

A. The intrastate rights in Connecticut blanket the complete State; in Massachusetts, approximately 85 percent.

367 It does not have intrastate rights out in what is known as the Cape territory and the northwestern section. It has some rights in Rhode Island, close and adjacent to Providence, and has rights in New York State, more or less on the direct route between Buffalo and Albany, thence south into New York City, and, on the other hand, into Binghamton and the surrounding towns there. I would say we probably blanket the State about 70 percent.

Q. Do you have your tonnage figures for the year 1940 and for the six months of 1941?

A. In 1940 we handled 900,223,467 pounds. In the first six months—well, it is not six months, it is only six periods, up to June 15th, we handled 504,325,721 pounds.

Q. At that rate, what do you estimate your total tonnage for 1941?

A. About a little over one billion pounds.

Q. Of this tonnage, about what percentage would you say would be interchange freight?

A. About 20 percent.

Q. Roughly, 200,000,000 pounds?

A. About that.

Q. Per year.

A. That is right.

368 Q. And of that interchange freight, how much, in your opinion, is in interchange with the members of this proposed unification?

A. About one-half.

Q. Now, if the application be approved, do you see any diversion of interchange freight from carriers not in the proposed unification to carry it to carriers in the proposed unification?

A. There would not be too much diversion; there would be some. The reason why there would not be too much is that where we connect with the carriers in the proposed unification, they now receive by far the greatest part of that tonnage. In addition, whatever other portion they do not receive, a good portion of that is on shipper's routing—always have, and presumably always will.

Q. State in your own words what benefits you feel will result from this proposed unification with regard to this interchanged freight.

A. The greatest benefit that would result is the saving of elapsed time between origin and destination and the elimination of the handling of merchandise, which tends very much to create what we call "O. S. and D.'s"—over shorts and damages. I can best explain it, probably, with a specific example.

At the present time, we are large customers of the Horton Motor Lines at New York City, for instance. We now pick up the freight in New England, much of it in Springfield, Mass.

369 It is assembled, and much of it in Bridgeport, and send it into New York City, and arriving there some time the following morning, and delivery is made to the Horton Motor Lines some time during the day. In most instances we try to make that at his convenience, which would probably be late in the forenoon or some particular time that the management may get together on that would be advantageous to them. They accept the freight then and carry it on to destination. Under this arrangement it would be possible and most feasible to accumulate that merchandise for direct loading into the southern points. The vehicle could leave New England on schedules that could be worked out by the operating departments; so that there would be practically no elapsed time at the interchange point. Whether that would remain at New York or some other point would be an operating problem.

Q. What can you tell us of the present load factor of Consolidated Motor Lines, briefly?

A. The load factor of Consolidated at the present time is 18,500 pounds, or about 84 percent.

Q. Now, will you tell us, what, in your opinion, would be the effect of the proposed unification on the load factor?

A. The load factor should be increased because of the consolidation of particularly Moran and McCarthy, where we lay each other's operations in various territories. Probably I can best explain by a specific example.

370 For instance, in southeastern Massachusetts, we operate into the territory which is known in our neck of the woods as the McCarthy territory. Our load factors are light. I am sure that our merchandise would help to increase his, and would take away from our total these light load factors, which would make an average of a heavier load factor throughout the system. That is only one example. There may be a half a dozen others throughout the system.

Q. And, conversely, the territory in New England served by Consolidated, in which the McCarthy business is light—

A. The same thing will apply in southern Connecticut to us that applies in southeastern Massachusetts to McCarthy.

Q. Will you now explain the maintenance set-up of Consolidated Motor Lines, briefly?

A. The Consolidated Motor Lines operate under a preventive maintenance schedule. Its vehicles are scheduled for periodical inspection into the various shops, the principal of which in the East is located at Hartford, and in the western division at Geneva, N. Y. The equipment in these shops, and particularly Hartford, is of the finest and most up-to-date that we have been able to procure. Our preventive maintenance program has proven to us in the time that it has been in effect, which is only two or three years,

371 that it has saved us over this time considerable costs, and the most important, has eliminated, according to the last figures that I analyzed, about 65 percent of what we call road delays, as compared with what they were previously. We have, for instance, in our shops at Hartford a dynamometer large enough to take any commercial vehicle. That particular instrument has saved for us some twenty to thirty thousand dollars in fuel consumption for the first six months of this year.

Exam. BAKER: Will you explain for the record just what a dynamometer is, Mr. Arbour?

The WITNESS. A dynamometer is—and I am going to explain it as I understand it—a piece of machinery, whereby the vehicle is tested in the shop under the same stress as it would be on the highway, going up hill or on a level road. By the readings that are made possible, a man operating the dynamometer can tell when the motor is functioning at its best, showing that it will operate to the utmost efficiency, without going out on the highway, and that is done by two rollers that are set into the ground, in which there is water pressure set against it, and the pressure against the tires is equal—you can make it equal to any percent grade you wish or any pulling power. Then they set their motor at the revolutions that the motor should travel and see that it reaches its utmost perfection. We know that in over-hill cases, where the human element

372 is pronounced, the job is as nearly perfect as could be produced. We have been able to increase its efficiency as high as 23 percent through the use of dynamometer analysis.

By Mr. JOSELOFF:

Q. Have you explained for the record the safety patrol system of Consolidated, Mr. Arbour?

A. I have. Safety patrol system is more closely tied up with the insurance feature of our organization. We are self-insurers, and have been, I believe, since 1935 or 1936—1934.

Q. Which is it?

A. 1934; and in order to get the proper experience that is necessary for a successful self-insurance program, we organized our safety work in all of its phases, one of those being the safety patrol, which operates over the highways on which our vehicles travel. Most of these patrol cars operate at night, because the most of our operation, that is, the over-the-road operation in our territory is all at night. They handle everything that might happen to a vehicle between terminals, such as covering accidents, policing the driver for reckless driving, and so forth, although their intention is to be helpful to the drivers and the personnel, and also one of their prime functions is in the case of road failure, to get that vehicle moving as quickly as it is humanly possible; or at least take it off the highway, where it immediately becomes a hazard when it is stopped on the highway. That patrol covers every foot of our operation.

Q. Our maintenance set-up with safety patrol work comes under the general heading, I believe, of scientific preventive  
373 maintenance; is that correct, Mr. Arbour?

A. That is right.

Q. And that has been in force on an extensive scale with your company for how long a period of time, would you say?

A. Well, we attempted to put this preventive maintenance in about 3 years ago, but it had not become really effective until about a year—I mean we have reached the point just where we were getting the real benefits out of it.

Q. Will you state what those benefits were, in brief general terms, and then give us your views as to whether they could be extended to other members of the proposed unification?

A. Well, I believe I have outlined what the benefits of preventive maintenance are to Consolidated, and I think the record will show that our maintenance costs—naturally, the fleet is not getting any younger—have been very favorable in comparison with other operators.

Q. I mean from the standpoint of safety, particularly, on the highway.

A. This patrol could just as easily handle the operations of the other member companies within the area that we serve at practically no expansion of the patrol, or very little. As to its benefits, I am a firm believer in this theory of preventive maintenance, because of the results that Consolidated has shown, and I think it can and should be extended to this unification, if it becomes a reality.

374 Q. Will you tell us something about the situation of Consolidated with regard to its terminal facilities, from the standpoint of adequacy and need for future expansion?

A. Its terminal facilities have been improved somewhat, but they are needed in many locations. There is now under construction a new terminal site in Philadelphia. There is started, or about to be started, construction of new terminals in Albany and Waterbury. It needs a new terminal in Syracuse, and with those terminals it would be in pretty good shape, insofar as terminals are concerned, with the possible exception that I did not mention of New Haven, where we are on a month-to-month basis, and in Binghamton, which is a small operation.

Q. Do you see any economies that can be effected in the reduction of general overhead expense and terminals, if the proposed unification be approved?

A. I am sure it can be. I think the best example that we have to offer is that by the opening of a new terminal in Boston, Mass., which is a tremendously heavy tonnage point, for Consolidated, where our facilities were probably the worst that could possibly be examined, we were able to reduce the handling cost there about 21½ cents a hundred. However, that is the extreme, but it is an example of what may be accomplished with proper facilities, and, in addition to that reduction, the service—I can't begin to tell you the percentage that it was improved, because, before, our

375 service was real bad, due to the congestion in that particular terminal area.

Q. You heard the testimony of Mr. Clay of Transport, Inc., and Mr. Brock of Southeastern, did you, Mr. Arbour?

A. I did.

Q. And particularly with reference to their testimony on the adequacy of their terminals, in your opinion, from the experience of Consolidated, could similar benefits be effected in the territory served by those companies in some such manner as Consolidated has already benefited?

A. I am sure they could.

Q. Will you explain now the direct wire service of Consolidated?

A. At the present time Consolidated has its own leased telephone wires, extending from Boston to Newark and all intermediate terminals, with the exception of Providence, Norwich, and

Pittsfield, which terminals are tied in for various periods during the day. It has its own leased wires in New York State between Geneva and Utica and Syracuse. It then has a tied-in wire two periods a day between Utica and Springfield. In other words, Albany is tied in, and similarly between Newark and Philadelphia, I believe. Those are the leased wires that we have.

Q. What has the advantage been to Consolidated of this direct wire service?

376 A. Well, the best answer to that is that I do not know how we could get along without it. At the present time, we are able to handle our operating problems on the moment. Without waiting for toll calls, we handle our own ring system throughout on these wires, so that we are able to pick up and talk to whichever terminal we wish, immediately; but the most important has been the tracing of shipments and the information that shippers should receive from us as to the movement of their freight while en route, on many occasions. It also is extremely beneficial in our internal operations, such as the movement of parts to the various stations on emergency matters, and, in general, is the life-line of the operating department.

Q. Do you think it would be difficult to operate with a central dispatcher system without the "L. D." service?

A. I would be practically impossible.

Q. Now, I believe the Horton Motor Lines has a similar direct wire service, Mr. Arbour. Do you know that of your own knowledge?

A. They do.

Q. And are there any other companies in the proposed unification that have that system?

A. I have not checked with many of them, but I know that the McCarthy System has, and I believe Moran has. I do not know whether the others have it or not.

377 Q. In any event, do you think this system of direct communication, with the benefits that you have just stated, to the companies, and to the public, could be extended to cover the entire territory served by the proposed unification?

A. I am sure it could be.

Q. And with what results?

A. Well, I think it would hasten the information that is necessary to clear up any question as to the freight transportation, to answer intelligently and quickly a shipper's request as to freight in transit, and to handle any operating problem, particularly as to the dispatching, that would be necessary, and I think would eliminate many routing wires that there are in the system today.

Q. Would you say generally the beneficial results to Consolidated apply over the entire territory?

A. That is right.

Q. Will you explain the self-insurance plan of Consolidated?

A. Consolidated's insurance program is one of partial self-insurance. It is self-insurer on the first \$10,000 per person and \$10,000 per accident, and it covers excess amounts up to a total of \$100,000 per person and \$300,000 per accident. It is self-insured up to \$500,000 on property damage, and carries excess up to \$50,000. The primary liability is secured by surety bonds, which are on file with the Interstate Commerce Commission.

378 It carries fire, theft, riot, civil commotion for all equipment, in an insurance company. However, that is subject to a \$500 deductible collision feature, and the collision insurance only applies to units whose value is in excess of \$1,500. It carries general cargo insurance, including sabotage, et cetera, to the extent of \$75,000 per truck and \$200,000 per terminal, with the exception of two locations, where the terminal coverage goes as high as, I think, either four or five hundred thousand dollars.

The workmen's compensation for the States of New York, New Jersey, and Pennsylvania is in an insurance company. We are self-insured in Connecticut, Massachusetts, and Rhode Island up to \$10,000, and excess insurance is purchased up to \$100,000. We purchase fire and theft insurance on our personal property and on the effects of the various executive offices and terminals throughout the system.

Q. What has been the effect of the policy of self-insurance, insofar as safety and number of accidents are concerned?

A. The self-insurance program, since its beginning, has reduced the accident frequency by over 45 percent. At the time we went into this program I think we had a debit rating of some 25 or 30 percent. Today I have a bona fide offer from substantial  
379 insurance companies to write that insurance at about a 60 to 70 percent credit rating. So that speaks as to the results, and those results were only accomplished through this very elaborate and complete safety program, and also by the personnel realizing very definitely that accident payments now come out of the—well, speaking in our language, the boss' pocket, and not out of the insurance company. They have been very cooperative, and they have done a real good job.

Q. Do you think an extension of this plan would be feasible for other companies in the proposed unification?

A. To my mind, there is no question about it. I believe this program could be extended throughout the unification. I know that in our territory, our immediate territory, it could be extended at a great saving to the companies combined, because most of the work we do would be beneficial to the other companies within the area that operate in, at practically no additional cost.

Q. Mr. Arbour, in connection with this safety work and your terminal situation, and so forth, is it not a fact that at the present time some of the vehicles of Consolidated and other companies in the proposed unification come into New York City proper?

A. That is right.

Q. Now, if the proposed unification were to be approved, could there be an avoidance of many units coming into the congested metropolitan area by the use of the George Washington Bridge, or some other river crossing, and the utilization of other terminals outside the congested area?

380 A. Well, I tried to convey that impression in my former statement, and gave an example, where I stated that the vehicle could go right on to destination, either for exchange at New York or at some other location. My own impression is that vehicles loaded in New England for points beyond should never go through the congested traffic area of New York City. They should go around that area, and the exchange could be made either at Newark or some other point—at Philadelphia or something of that sort. That, by the way, would relieve the congestion at our terminals tremendously in those metropolitan areas, where we really need relief.

Q. Mr. Arbour, the existing contract of the stockholders of Consolidated with Associated Transport, 100 percent of the stock is to be exchanged?

A. That is right.

Q. In your opinion, is there a need for additional working capital for Consolidated Motor Lines?

A. I believe that Consolidated should, in order to be more stable and financially capable of effecting all economies, increase its working capital by about \$200,000. That \$200,000 does not include the purchase of any equipment which will be necessary, and, 381 as a matter of fact, in process of negotiation at this time.

I am talking simply now of working funds. There might be included, to a small degree, improvements at terminal sites—not the building of complete terminals. By "improvements," I have in mind several terminals now where we expect to spend \$10,000 or \$15,000 in yard improvements, but not the building of new terminals. That would put us in a position so that we would be prepared at all times to meet our real liabilities on a moment's notice and protect us against any drop in business, and so that we can carry on.

Q. Now, Mr. Arbour, with regard to the flexibility of equipment, I would like to have you comment on that, because you have had personal experience with the flexibility of equipment, particularly in emergencies. Would you please tell us your ex-

perience in the hurricane of September 21, 1938, keeping in mind the benefits of this proposed unification in similar emergencies?

A. Well, referring particularly to that hurricane period, when New England was hit very hard, it was impossible to handle the emergency with all of the motor vehicles that were available. Even some of our good friends loaned us some vehicles to help us out. If this system had been in operation, I am sure that we could have mustered many additional units to help in that emergency. Furthermore, I do not think we have to go back that far. We have been confronted, and are from time

382 to time today, in our area, with national defense transportation, where we have been unable to move the merchandise in the quantity that the authorities wished to have us move, and I know that they were unable to move it with their facilities, because they were not available. I now have in mind in particular the movement of gun stocks, where, by all available facilities, they were not able to move over 20 percent of their requirements. Had this unification been in operation, I feel certain that we could have gotten units pretty fast to help in that situation, by everybody squeezing a little bit to help the other fellow out.

Q. Will you now comment on the probable effect that the proposed unification would have on consolidation in the matter of pick-up and delivery?

A. It would help that situation tremendously. I think we can agree with Mr. Horton that in many of the metropolitan areas the real answer is to have inbound and terminal terminals, and stop this cluttering up of freight at those terminal areas, so that we can really move the freight without that congestion, and if we had these terminal facilities; the proper distribution set-up and the proper pick-up set-up inbound, the deliveries would be made much faster than they are today, and in some of the metropolitan areas, many of us, I am sure, are not able to complete our deliveries within the working day, and we do not have the facilities to operate two terminals in the one city, I can assure you that.

383 Q. Now, Mr. Arbour, you testified that throughout the previous history of Consolidated there have been mergers and acquisitions.

A. That is right.

Q. On the basis of your knowledge of the trucking business, and with particular reference to your experience in it relative to mergers and acquisitions, I ask you whether, in your opinion, the proposed unification would decrease the personnel or the number of the employees of the members of the proposed group?

A. My experience in mergers and consolidations, which have never been as large as this one, but which have been numerous,

definitely shows that employment of personnel has increased in every instance. The best possible example of that is the last merger, which became effective on the 17th day of July 1937, which was in a period before the defense boom. Up to March 23, 1940, the personnel had increased in that particular case by 23.6 percent.

Exam. BAKER. Which particular merger or acquisition are you referring to now, Mr. Arbour?

The WITNESS. The Simpson-Thompson-Ralph Express merger, at the time they consolidated. That became effective on the 12th of July, but I have the week ending the 17th here.

By Mr. JOSELOFF:

384 Q. Will you state for the record the number of employees on the 17th of July, and on the other date that you mentioned?

A. We had 954 employees on the 17th of July 1937. On the 3d of March 1940, we had 1,179 employees. On August 2, 1941, we had 1,374 employees.

Q. Now, Mr. Arbour—

A. These are regular employees, by the way. We in our business have what we call "spares," to take care of additional peaks, etcetera, but these are regular pay roll employees.

Q. And that figure of 954 employees on July 17th was after the acquisition that we have been talking about?

A. That is right.

Q. Will you please give us your opinion as to what effect, if any, the proposed unification will have on competition in New England?

A. In my honest opinion, it will have absolutely no effect, because, in New England, there is so much competition that the unification of these few lines certainly won't even be noticed.

Q. Mr. Arbour, I show you a paper headed "Representative List of Motor Carriers Serving the Same Territory as Consolidated Motor Lines, Inc., and McCarthy Freight System, Inc., in Massachusetts, Rhode Island, Connecticut, Metropolitan New York, Northern New Jersey, and Albany, N.Y., Capitol District," and ask you whether or not this was prepared under

385 your direction?

A. It was.

Mr. JOSELOFF. May I have that marked for identification, please?

Exam. BAKER. The document described will be marked Applicant's Exhibit No. 3 for identification.

(Exhibit No. 3, Witness Arbour, marked for identification.)

By Mr. JOSELOFF:

Q. In reference to this exhibit, Mr. Arbour, those companies that have a star appearing before their names are class I motor carriers?

A. That is right. I believe there are 56 of them on that exhibit.

Q. And the total number—

A. 189, I believe.

Q. Now, you will notice that this exhibit is headed a "Representative List."

A. That is right.

Q. Are there other carriers than those set forth on this list?

A. Hundreds of them.

Q. And this list has been compiled from your years of knowledge and experience in the motor carrier industry in this territory, together with check-ups of the files of the Interstate Commerce Commission?

A. That is right.

386 Q. Is it a true and correct list, to the best of your knowledge, information, and believe?

A: It is.

Mr. JOSELOFF. I would like to offer this in evidence, if the Examiner please.

Exam. BAKER. If there is no objection, the document marked for identification as Applicant's Exhibit No. 3 will be received in evidence.

(Exhibit No. 3, Witness Arbour, received in evidence.)

By Mr. JOSELOFF:

Q. Now, Mr. Arbour, with reference to remaining competition in New England, could you state for the record the revenues of a few of the larger class I carriers remaining in the New England territory?

A. Well, one of our largest competitors in New England is the Adley Express, whose volume is 1,750,000. These are 1940 figures.

Q. And those figures have been obtained from what source, Mr. Arbour?

A. From the records in the Interstate Commerce Commission. The next largest system in New England proper is, I believe, the Seaboard Freight Lines, about 1,725,000.

Exam. BAKER. Is that a subsidiary?

The WITNESS. That is a subsidiary of the Keeshin. I don't know what their full correct name is.

387 Mr. JOSELOFF. Keeshin Freight Lines, Mr. Arbour.

The WITNESS. Keeshin Freight Lines. By the way, both of those competitors blanket our entire operation in the Eastern Division, which is known to us as that portion covering

New York City, Connecticut, Rhode Island, and Massachusetts, up to and including the Capitol District at Albany.

By Mr. JOSELOFF:

Q. While we are on that point, is it your understanding that when the witness for the Moran Transportation Lines takes the stand, the competition so far as New York State is concerned will be developed?

A. That is right, with the possible exception that I have a few figures on that district that I would like to have included in the record, if it is agreeable.

Q. Certainly.

A. The New England Transportation Company, which is a company owned by or a subsidiary—I don't know which you would call it—of the New Haven Railroad, volume \$1,575,000, and M. & M. Transportation Company, \$1,461,000. I have many others here, but those are the largest in New England, complete systems. The M. & M. is not as complete as the other two I mentioned, and which parallel our lines practically in their entirety. I would like to state that we have similar information here for some of the companies that parallel our lines in New York State.

388 Q. I would suggest that you put that information into the record, so long as you have it before you, Mr. Arbour.

A. Liberty Motor Freight Lines, \$1,900,000. And I want to state for the record that the Seaboard Freight Lines, whose volume I read earlier, also parallels our lines completely in New York State.

Mr. WIPRUD. May I inquire as to the Liberty what the figure was there?

The WITNESS. \$1,918,000.

Mr. WIPRUD. I was wondering if that was known as a class I carrier.

The WITNESS. No; they are a New York State operation.

Mr. WIPRUD. Oh, I see.

The WITNESS. It will be covered by Mr. Altwater, but I have figures here, and they do parallel our operation in New York State.

Mr. WIPRUD. They are an interstate carrier?

The WITNESS. Oh, yes.

Mr. WIPRUD. You said the asterisk denotes a class I motor carrier. There is no asterisk before the Liberty Motor Freight Line, and I was wondering about it.

Mr. SULLIVAN. Mr. Wiprud, you will notice that that exhibit of Mr. Arbour's deals with New England. There will be a similar exhibit for New York State. He runs in New England and New

York State. He is apparently moving into New York, 389 too.

Mr. WIPRUD. Oh; I see.

Exam. BAKER. To clarify that point; Mr. Arbour, is Liberty Motor Lines, whose address is Secaucus, N. J., the same company which you have listed as having operating revenues of \$1,800,000?

The WITNESS. Yes. It should have been marked. As a fact, I know that they are a class I carrier, because, in having the exhibit checked yesterday, I have some check marks here, and although the asterisk is not on the copy offered for the record, the check mark shows that it is a class I carrier.

Exam. BAKER. You may proceed.

By Mr. JOSELOFF:

Q. Will you continue, Mr. Arbour, please.

A. I only wanted to add, that insofar as New York State is concerned, we are also paralleling that territory by the Red Star Lines, and almost completely by the Niagara Freight Lines. The information as to their volume, etcetera, I am sure Mr. Altwater, of the Moran Company, will give you.

Q. Have you prepared a summary of representative common carriers, operating between Boston, Mass., and various New England points, setting forth the number of carriers and the operating revenues?

A. I have.

Q. Are they all class I carriers?

390 A. They are.

Q. Will you please state what your examination has revealed, please?

A. Well, for instance, between Boston and North Adams, we have 18 class I carriers, whose total volume is \$7,755,369. Between Boston and Springfield, we have 42 class I carriers, whose total volume is \$19,365,102. In Providence, we have 45 class I carriers, that is, between Boston and Providence, whose total volume is \$20,409,477.

From Boston to New London, we have 30 class I carriers, whose total volume is \$16,231,272. Between Boston and Hartford, we have 37 class I carriers, whose total volume is \$18,478,183. Between Boston and New Haven, we have 37 class I carriers whose total volume is \$18,669,856. Between Boston and New York City, we have 36 class A carriers, whose total volume is \$18,805,839. Boston to Albany, we have 18 class A carriers—

Exam. BAKER. You mean class I, do you not?

The WITNESS. Class I. Whose total volume is \$10,512,350. Between Boston and Philadelphia we have 16 class I carriers, whose

total volume is \$11,901,652. Between Boston and Haverhill, we have 24 class I carriers, whose total volume is \$9,183,468.

**Exam. BAKER.** In connection with those figures, Mr. Arbour, are they based on the 1939 or 1940 volume?

**The Witness.** 1940 revenue.

**Exam. BAKER.** Can that information be furnished in exhibit form, naming the particular carriers that make up the totals that you have indicated?

**Mr. JOSELOFF.** Yes; we can furnish that, if you desire it, Mr. Examiner. Of course, that is all taken from the records on file with the Interstate Commerce Commission.

**Exam. BAKER.** I believe the Commission should know the carriers which you have in mind as making up those respective totals; so I will request that there be furnished, in exhibit form, a statement showing this information which Mr. Arbour has given orally, and, in addition, showing the names of the carriers which make up the total figures that he gave.

**Mr. JOSELOFF.** Well, Mr. Examiner, you have in mind the names of the carriers operating between these points that Mr. Arbour just gave?

**Exam. BAKER.** Yes. For instance, he stated 19 class I carriers between Boston and a certain point. The exhibit should list the 19 carriers and show the volume of each.

**Mr. JOSELOFF.** Very well.

**Exam. BAKER.** Can that be furnished during the course of the hearing or would you prefer to furnish it subsequently?

392 **Mr. JOSELOFF.** We will try to furnish it during the course of the hearing, if we possibly can; at least before the hearing is over.

**Exam. BAKER.** Will you such effort, and if you are not able to do that, call it to my attention before the hearing is closed?

**Mr. JOSELOFF.** We will be glad to.

**Exam. BAKER.** Copies should, of course, be furnished to opposing counsel.

**By Mr. JOSELOFF:**

**Q.** Mr. Arbour, in listening to the wealth of motor carrier competition to which you have just testified remaining in New England, particularly, is there other competition by railroads and private carriers—private trucks?

**A.** Our entire system is flanked by the rail system in its entirety; in some locations by several. Our type of operation, particularly in New England, is short-haul operation. There are many private vehicles, and it lends itself to private operation to a great extent. In addition to these that I have furnished here, as I stated previ-

ously, there are literally thousands of others operating over that territory.

Q. In addition to that, is there competition by water?

A. There is, in connection with several of the main line routes.

393 Q. Mr. Arboff, will you please state for the record the reasons which you have, and other stockholders of Consolidated, for joining in this proposed unification?

A. Well, the most important reason of all is the stability. I believe that with this unification we will create for the stockholders of Consolidated a stability that can only be created through such a program. It will protect them, in my opinion, to a much greater extent than we can at the present time, in case of a recession, which history shows has always followed a boom. It gives them the benefit of what I consider the finest and best operating heads in the trucking industry today. In addition to that, it will put at our disposal the various benefits that were mentioned in my testimony, the best of which is working capital. It will give us an opportunity to effect savings.

At this time, I do not feel that we can deplete our working capital because, I think if something happened, I would not be in a position to stand a shock. By that I mean oftentimes we have been in a position to purchase commodities, supplies, et cetera, but I just could not afford to do it. It had to move quickly. I, and particularly my stockholders, believe that when eight companies of this type can become one by the exchange of stock, we have a nucleus of one of the strongest and finest organizations  
394 that we can possibly get together in this industry, and for those reasons we are very happy to be a part of this unification.

Q. What is your opinion as to the manner and time and method of effectuating this proposed consolidation, if approval of the Commission be granted?

A. From my experience, I know that it would be a very sad mistake if we attempted, or, for some reason, had to make this consolidation or merger overnight. I know very definitely that that can only be accomplished in a way to effect the utmost economy and to improve the facilities of the existing companies by being handled step by step. I believe that may be handled after a period of time and by a divisional operation, but probably for the good of the unification, if we handled this cautiously I am sure it will not take too long a period. My experience has been that in the southern merger, which is a fair-sized merger in comparison to ourselves, we did not get complete unification and real operating unification for a period of one year, and then it left something to be completed.

Q. In the meantime, do you see the holding company feature of this proposed plan, pending final consolidation, as a practical means of accomplishing divisional operation?

A. There is no question about that. There are many items that can be handled immediately. The most important items  
395 can be done immediately. My reference to delay was more to the operating end, the practical operating end.

Mr. JOSELOFF. Those are all the questions that I have.

Exam. BAKER. Before we begin the cross-examination, we will take a recess for 15 minutes.

(There was a short recess taken.)

Exam. BAKER. Come to order. Is there any cross-examination of Mr. Arbour?

Mr. TOBIN. Yes; Mr. Arbour. I have a few questions.

Cross-examination by Mr. TOBIN:

Q. Mr. Arbour, in connection with this merger of Simpson, what were the names of the companies that were merged at that time?

A. Simpson Transportation, Thompson Transportation, and Ralph's Motor Transportation.

Q. Ralph's?

A. Ralph's, R-a-l-p-h-s.

Q. Do you know how many employees each one of those companies had before the merger?

A. I do not know how many each had, but I know that we took  
in 460 at the time.

Q. 460?

A. That is right.

Q. 460 from each one of them, or from all of them?

A. No, no; the total.

396 Q. How many did you have before the merger?

A. That would be the difference between 460 and 954—approximately 500.

Q. When you took in 460, you did not know how many they had?

A. What do you mean?

Q. You did not know the total?

A. I do not know how many Simpson, Thompson, and Ralph had. I have not that here, but I have the total number—460 employees taken in over the merger, as of September 12, 1937, which was the date the acquisition was made final.

Q. That total, then, was how many?

A. 954.

Q. You mentioned the emergencies in New England, and you illustrated by the hurricane.

A. That is right.

Q. How many times have you had hurricanes there?

A. Well, we had a hurricane once; we had floods on two occasions; we have been through catastrophes in that territory.

Mr. TOBIN. That is all I have.

By Mr. WIPRUD:

Q. Can you give in percentages and the routes of your line that parallels the line of McCarthy Freight System—just roughly?

A. I would know them as to route miles. I could say this, that the McCarthy Freight System parallels about 90 percent of our eastern operation and none of our western operation.

397 Q. And what percentage is that of your whole operation?

A. I think I can give you a fair figure on that. If I had the June 15th statement I could give you a pretty fair percentage on that. Our western operation is approximately 25 percent of our total operation. The East is 75, and the West is 25.

Q. Then, of the 75 percent, as I understand it, McCarthy parallels 90 percent of that?

A. I would say close to that.

Q. Now, what was—

A. Now, wait a minute. In miles, not in value.

Q. In miles.

A. That is right.

Q. Now, could you give us the same figures; that is, the same applicable figure to the routes of Moran? What percentage of your operation—

A. Twenty-five percent. They parallel all of our western operation, while they do not parallel any of our eastern operations.

Q. Do they have operations paralleling any other carriers involved in this unification?

A. Well, we parallel between New York and Philadelphia. The map shows we parallel the Horton Motor Lines.

Mr. JOSELOFF. And also Barnwell Transportation Company.

Exam. BAKER. Did you answer Mr. Joseloff's observation?

398 The WITNESS. I am just finding out. That is right.

By Mr. WIPRUD:

Q. Then, substantially all of your operations parallel operations of other carriers involved in this unification?

A. That is substantially correct; yes, sir.

Q. Is it a fact that in so far as this proposed unification is concerned, it is more in the nature of a merger of parallel operating lines than it is of an end-to-end unification? I am speaking of your company.

A. No; this is by far not a merger of parallel motor lines. It is more of an end-to-end proposition.

Q. Well, I am speaking now so far as your operations are concerned.

A. In relation to the operation after the unification?

Q. That is right.

A. By far, an end-to-end, as against parallel.

Q. Well, all of these parallel operations will be merged into one operation.

A. That is right.

Q. Is there substantial competition between the carriers that parallel your route at the present time?

A. I don't quite understand that. Just what do you mean?

Q. Well, is there—

A. Competition for us, do you mean, or—

Q. Substantial competition between you and these other  
399 carriers.

A. Oh, yes.

Q. That parallel your lines.

A. Yes.

Q. At the present time.

A. Yes; definitely so.

Q. The Examiner has asked you, Mr. Arbour, to submit an exhibit showing the other carriers that operate between given points in New England, as well as their revenue, for the year 1940. In order to afford a comparison, would it be possible for you to also add to that exhibit the 1940 revenue of the unified line operating between those points?

Exam. BAKER. Mr. Wiprud, is not all of that in the record?

Mr. WIPRUD. Well, as I understood the statement, Mr. Examiner, one of the difficulties in furnishing that is the amount of business that was handled by the carriers involved in the unification was not obtainable. If it is in the record, of course, I see no necessity for it. In other words, does the record show the 1940 revenue of the unified lines between such points as Boston and Springfield?

Exam. BAKER. My request for the exhibit did not contemplate that information should be shown as to the amount of revenues derived by these competing carriers between certain points.  
400 The revenues would be the total operating revenues of those companies.

Mr. WIPRUD. In other words, it would merely list the so-called independent companies and the total revenues of those companies?

Exam. BAKER. That is correct.

Mr. WIPRUD. Now, in order to afford a comparison as to the extent of the elimination of competition, we should have the revenues of the unified line; should we not?

**Exam. BAKER.** The point I was making was that the total operating revenues of the companies involved in this unification are already in the record.

**Mr. WIPRUD.** Well, I notice it was not between these points, so as to afford a comparison.

**Exam. BAKER.** Well, the other information is not between those points.

**Mr. WIPRUD.** Maybe I misunderstood it, Mr. Examiner, but this witness gave, as I understood it, the 1940 revenue of 18 class I carriers between Boston and North Adams, \$7,755,369, as indicating the competition that would remain between those two points.

Now, if it were possible, to have a comparative figure of the 1940 revenue of the unified lines operating between those two points, then we would have a comparison as to the effect of this merger upon that competition.

401 **Exam BAKER.** That would merely mean the total operating revenues of McCarthy and Consolidated; would it not?

**Mr. WIPRUD.** Is it in the record as between those two points? Is it broken down?

**Exam. BAKER.** No; it is not broken down. The other figures are not broken down as to operations between those two points.

**Mr. WIPRUD.** Then, I misunderstood the testimony of the witness, and I will ask the witness now.

By Mr. WIPRUD:

**Q.** In giving the 1940 revenue of the 18 class I carriers between Boston and North Adams, does that represent the revenue of business transported between Boston and North Adams?

**A.** It does not.

**Q.** What does it represent?

**A.** It is the volume of the carriers in this list who have operating rights and offer service between Boston and North Adams.

**Exam. BAKER.** As I understand it, Mr. Wiprud, those figures were given as an index to the size of the carriers rather than to show the proportion of the business handled by those carriers between those points.

**Mr. WIPRUD.** Yes.

Now, may I ask the witness another question on that.

By Mr. WIPRUD:

**Q.** Following that you gave the 1940 revenue of 42 class I carriers between Boston and Springfield.

**A.** That is right.

402 **Q.** Is it possible that the figure that you gave as the 1940 revenue of those 42 carriers may be a duplication of the fig-

ure you gave for the 18 class I carriers between Boston and North Adams?

A. It definitely was, in some cases.

Q. That clears up the point.

A. Some that operate between Boston and Springfield do not operate between Boston and North Adams. That is right.

Q. Let me ask you this, Mr. Arbour: Does the Arrow Transportation parallel any of your lines?

A. I do not believe we are in competition with Arrow Transportation; at least I did not think we were, unless it is Newark to Philadelphia. I did not think they went in there.

Mr. SULLIVAN. Arrow does not go into Philadelphia.

The WITNESS. I don't believe they do.

By Mr. WIPRUD:

Q. They do not parallel—

A. No; I don't believe they do.

Q. As I understand your testimony, at the present time your business is a short-haul business.

A. Yes; up in New England we are all known as short-line carriers.

Q. And this proposed unification is largely for the purpose of making possible long-haul motor truck operations.

A. No, sir; it is not.

Q. That is one of the features, is it not?

403 A. The service we offer to our shipping public on the long haul is a very small part of our business, an extremely small part of our business, and that would be improved; the facilities would be improved for moving it in a shorter space of time.

Q. Have you an opinion as to what percentage of the business of the unified lines might be long haul?

A. What would you consider "long haul"?

Q. Well, what do you consider "long haul"?

A. My opinion of long haul is anything over the length of our system, which is 350 miles or so.

Q. Three hundred and fifty miles?

A. Or 400.

Q. Well, what percentage would you say of the business of the unified lines would be long-haul business?

A. Let me be sure that I understand you. Business that now goes to members of the unification on long haul; is that what you mean—if we have others that are not in the unification on long haul also?

Q. You heard the previous testimony about the long-haul business.

A. That is right.

Q. Which would result from this unification.

A. Yes.

Q. In your opinion, what proportion of the business  
404 would be long haul if the unification is approved?

A. I would say it would remain as it is—10 percent, the way it is now.

Mr. JOSELOFF. That 10 percent, Mr. Arbour, is as far as your lines are concerned? You say "10 percent, the way it is now."

The WITNESS. That is right.

Mr. JOSELOFF. I think Mr. Wiprud's question was directed to the total business; is that right?

Mr. WIPRUD. Of the unified lines.

The WITNESS. I have not any knowledge on that. I am in no position to know that.

By Mr. WIPRUD:

Q. You think it will be somewhat increased over the long-haul business that you experience in your operation?

A. I assume, with better facilities and quicker handling it will increase it very definitely.

Q. What are the advantages which would tend to increase that long-haul business if unification were put into effect, over the existing situation?

A. Better service.

Q. And that better service would be brought about by what?

A. Loading directly from the New England points to points of the other members in the unification. In many cases, that  
405 would be accomplished and would save time. In service I include not only transportation, but information that we would get better and quicker information, and we would get faster service to the point of destination.

Q. Would you say that the elimination of interchange would have anything to do with it?

A. Well, it would help materially; yes.

Q. Assuming a movement, Mr. Arbour, from your territory into the Carolinas, in your opinion would it be feasible for a truck or a trailer to move that entire distance?

A. Yes; it would be very feasible for a trailer to move it. A truck would also be able to move it, but it would mean an exchange of drivers at certain intermediate points. Probably the practical operation would be to have the trailer exchange power units at various locations en route.

Q. In other words, the most practical way would be to deliver it by trailer.

A. Well, practically our entire over-the-road business is moved a hundred percent by trailer.

Q. A hundred percent by trailer?

A. Yes.

Q. What effect do weight restrictions in various States have upon such a movement?

A. I am not too familiar with the southern weight restrictions. I know in New England we are uniform, but I do not know what the other weight restrictions are. I do not think I am  
406 competition to answer that.

Q. You do know that they vary in the various States.

A. I heard they do; but what they are I do not know.

Q. And the same is true of the length of vehicle to be transported.

A. I assume that is correct; yes, sir.

Q. Would you know whether or not the license requirements on such an assumed movement on the trailers would involve an allowance that might offset the possible saving?

A. At the present time—and I speak from experience—you can exchange trailers. The license plates are governed by the plates on the power unit.

Q. You would not know what those costs might be?

A. There would not be any. Probably I have not made myself clear.

Q. No. State that again.

A. I say there would not be any additional cost because the trailer is registered and the power unit governs the registration.

In other words, to give an example, we take a Massachusetts registered trailer and turn that over to an operator at New York for Philadelphia, we will say, and this we have done—I know it is a fact—we can hook that on to a Pennsylvania registered tractor and take it right into Pennsylvania, with the same Massachusetts tag.

407 Q. Is that the way the movement is handled now?

A. No; it is not now.

Q. But it can be done that way?

A. It can be done, because up until the acquisition that I referred to in 1937, that is the way we were operating with another line into Philadelphia, and I believe there is a similar operation between Moran and McCarthy today.

Q. Then, insofar as the through movement of trailers is concerned, it is not necessary to have unification to bring that about?

A. No.

Q. You spoke of unification as being a nucleus—affording a suitable nucleus for a motor truck transportation system.

Mr. Arbour, do you know of any outstanding commitments or any arrangements of any kind whatsoever for the acquisition of any additional lines in the event that unification is approved?

A. There is absolutely none, so far as I know. As a matter of fact, I might state that my own opinion is that we got a job to do here of our own, and we are not interested in any expansion.

Q. Then, in speaking of that nucleus, you did not have in mind any further expansion?

A. No, no.; I meant this unification right here.

Q. Did I understand the testimony of the former witness correctly, Mr. Arbour, when he made reference to some equipment financing that was recently done by Consolidated.

408 A. That is right.

Q. When was that financing?

A. I think the approximate date was either May or June.

Q. Of this year?

A. No. Wait a minute. In March—about the 15th of March, I should say.

Q. Of this year.

A. That is right.

Q. Was that a substantial amount of financing?

A. It was.

Q. Would you give the amount?

A. It involved approximately a half a million dollars.

Q. What was the nature of that financing? Was it a bank loan?

A. Well, maybe, if I give the history of it you can tell me what the nature of it was.

Q. Go ahead, Mr. Arbour.

A. Nothing more than an equipment loan. In other words, we bought some additional equipment, a very substantial amount, and we borrowed the money from the Guaranty Trust in New York to pay the manufacturer of the equipment. For that we gave the Guaranty Trust our note, secured by the equipment, for a period of, I think, 54 months.

Mr. JOSELOFF. Just to make one correction to get the record clear, what you mean is that you gave the Guaranty Trust

409 a conditional sale agreement? There were no notes executed?

The WITNESS. Well, all right. That must be what it was, but to me they were still notes; that is the only way I know them by, but now that you speak of that, I know it was a conditional bill of sale.

By Mr. WIPRUD:

Q. What interest did you pay?

A. Three and a half and four.

Q. I believe you testified, Mr. Arbour, that you are self-insurers.

A. We are to a certain extent, as I outlined in my testimony—not entirely.

Q. As I understand it, you have excess insurance?

A. Well, for instance, in cargo we have it fully covered, which we buy. We do not self-insure that portion.

Q. Do you think you have as good an insurance arrangement as any other trucking line?

A. I do.

Q. Or as good insurance as the proposed unification would have?

A. Of course, I am a believer in our theory of coverage, and I believe it would be advantageous to the remainder of the lines to follow that theory. Whether or not that will be borne out in actual analysis after the unification, I do not know.

410 Q. Well, you believe, do you think, that you obtain insurance as reasonably as anybody?

A. I believe I do; yes.

Q. Referring, Mr. Arbour, to the United Sales Company, in the Commission's report in the prior case, Docket 1223, The Transport Company—Control—Arrow Carrier Corporation, et al., it is stated on page 104 that Consolidated owns all of the United Sales' outstanding common A and six shares, representing 75 percent, of its common B outstanding. Has that situation changed since that report?

A. No; I believe that is the same.

Q. And the other shares are what—qualifying shares?

A. Qualifying shares; that is right.

Q. Can you state for the record the volume of business of United from the date of acquisition, which I understood was in May 1939, for the balance of that year?

A. \$76,899.51.

Exam. BAKER. For what period was that, Mr. Arbour?

The WITNESS. That was from May 5 to December 31, 1939.

By Mr. WIPRUD:

Q. Of that amount, how much represents sales by United to Consolidated?

A. \$76,334.

Q. Now, can you give us the figure for the calendar year 1940?

A. \$157,086.31.

411 Q. Of that amount, what represents sales by United to Consolidated?

A. \$157,086.31.

Q. Can you give us the figures to date?

A. I can give it to you up to 6-14.

Q. 6-14?

A. \$68,600.

Q. Of that amount, what—

A. The gross sales were \$69,281; Consolidated Motor Lines sales, \$68,600.

Q. Is United a manufacturing company?

A. They are not.

Q. Can you describe a little more fully the nature of their business?

A. Well, they repair tires and casings, and they handle sales of accessories.

Q. They purchase accessories and sell them to Consolidated; is that it?

A. That is right.

Q. And tires?

A. That is right.

Mr. WIPRUD: I believe that is all, Mr. Examiner.

Exam. BAKER. Mr. Arbour, you stated, I believe, that the contract contemplated that United Sales would discontinue operations in the event this application were approved.

The WITNESS. No; I believe I said United Arbour would  
412 discontinue; not United Sales.

Exam. BAKER. That is what I intended to say—United Arbour.

Does not your agreement give you the alternative of disposing of the operations of United Arbour?

The WITNESS. Yes. The agreement says that they be discontinued or disposed of.

Exam. BAKER. What are your present plans in that connection?

The WITNESS. Discontinue.

Exam. BAKER. The contract also provides that prior to the closing date Consolidated may acquire not more than 90 shares of its capital stock at a price not exceeding \$400 per share. Has that privilege been exercised?

The WITNESS. It has.

Exam. BAKER. And they purchased the entire amount specified?

The WITNESS. We have 90 shares at \$400 per share.

Mr. JOSELOFF. That was the transaction to which you testified on direct, Mr. Arbour.

The WITNESS. That is right.

Mr. JOSELOFF. A reduction of capital shares from 2,289 to 2,199, the present number of capital shares.

Exam. BAKER. So 2,289 shares presently outstanding is the amount after exercising the privilege referred to in the contract?

413 The WITNESS. That is right.

Exam. BAKER. Does the balance sheet in the application as of April 30, 1941, reflect the purchase of those 90 shares?

The WITNESS. Have you the balance sheet there?

Exam. BAKER. Do you know the date of such purchase? Perhaps that would be an answer.

The WITNESS. No; I am not sure of it. I thought I had it in my notes, but—

Mr. SULLIVAN. It is not shown, Mr. Examiner. The exhibits which Mr. Reicher is presently preparing will reflect it.

Exam. BAKER. There would be a deduction from your net worth to take care of the expenditure made for that capital stock?

The WITNESS. That is right.

Exam. BAKER. You made reference to the amount of interchange freight which was interchanged with members of the proposed unification. Has there been any substantial increase in that amount during the past year and a half?

The WITNESS. No; there has not.

Exam. BAKER. You also mentioned that your load factor is about 84 percent.

The WITNESS. That is right.

Exam. BAKER. Is that on your line-haul operations?

The WITNESS. Yes; on our line-haul operations.

414 Exam. BAKER. Would such a load factor be maintained in connection with your feeder lines?

The WITNESS. Well, by "feeder lines" you mean our suburban pick-ups to feed into the terminals for consolidation for line haul?

Exam. BAKER. Yes; that is right.

The WITNESS. That would not be included, because that is considered a local operation, insofar as we are concerned, in our system.

Exam. BAKER. Do you know what your load factor would be on such an operation?

The WITNESS. No; I do not believe I do.

Exam. BAKER. Would you say that your vehicles are generally loaded to capacity in that operation?

The WITNESS. Well, no; not in suburban runs because you make a complete circuit route, and some days you might come back with a full load, and many days you would have to come back with a half load, but you have to make that route, anyway. But they are not loaded to capacity, I am sure of that. There might be a few exceptions to that, of course.

Exam. BAKER. In other words, if your operations were consolidated with those of the McCarthy Freight Lines, it could logically be expected that the vehicles would be better loaded in that service?

415 The WITNESS. Very definitely so. In my example in the Southeastern merger, I referred to a great extent to the satisfactory service in that area, combined with the increased load factor of our local operations.

**Exam. BAKER.** You outlined the safety measures which are presently taken by Consolidated. As a member of the Board of directors of applicant, do you know whether or not applicant has any plans for inaugurating similar measures throughout this system?

**The Witness.** I know that in discussions we have very definitely discussed similar safety set-ups to be made for the system—something similar to our present safety set-up, and maybe improved to some extent.

**Exam. BAKER.** At any rate, applicant would have the benefit of the experience of Consolidated in that respect; would it not?

**The Witness.** It would.

**Exam. BAKER.** I believe you stated awhile ago that all of your lines were paralleled by the lines of one or more of the carriers involved in this unification. Does McCarthy Freight System operate into New York City?

**The Witness.** No; they do not, with the exception. I believe I am correct in stating, that at the present time there is the precious metals operation they have between Bridgeport and New York, but not for commodities generally.

**Exam. BAKER.** So your carrier, then, would be the only  
416 one of those here involved which is authorized to operate from New England points into New York City?

**The Witness.** That is right.

**Exam. BAKER.** I believe you also stated that at one time you had arrangements with an independent carrier for the interchange of trailers.

**The Witness.** That is right.

**Exam. BAKER.** And you stated that it was possible at the present time to make such arrangements. Is it practicable to interchange trailers with independent companies?

**The Witness.** The answer to that question, Mr. Examiner, is "yes" and "no." It is practical insofar as loading trailer and exchanging it, and eliminating rehandling at the connecting line points, but the headaches of following your equipment after it leaves your control, in my opinion, overshadow to a great extent the benefits that you may get from such an exchange. But it has been done; it is being done, and we did it for many years, but I would not want to do it with a dozen different carriers. I would want to be sure of the company that I was doing it with.

**Exam. BAKER.** Do you have arrangements with any company at the present time for interchanging trailers?

**The Witness.** Not as a regular procedure. Once in a while we do to expedite a movement or for special movement we might ex-

change a trailer, but nothing as a definite arrangement with anybody.

1 EXAM. BAKER. Referring to Exhibit No. 3, do you, of your personal knowledge, know whether the carriers there listed actually operate to the points indicated, or does the exhibit represent merely that they have authority to operate to such points?

THE WITNESS. This exhibit was prepared under my jurisdiction. I went over it with the people who made the preparation, and it was prepared with the information that we received from the Interstate Commerce Commission, as well as from our knowledge of every operation. It is my belief that they operate, actually operate, in every point mentioned.

EXAM. BAKER. Are all of these companies common carriers?

THE WITNESS. They are.

EXAM. BAKER. Are they common carriers of general commodities?

THE WITNESS. They are common carriers of general commodities.

EXAM. BAKER. I believe those are all of the questions I have of this witness.

MR. WIPRUD. Mr. Examiner, may I ask one question as a result of your examination?

EXAM. BAKER. Yes, sir.

By Mr. WIPRUD:

418 Q. Mr. Arbour, referring to Exhibit 5 attached to your application—I believe it is attached to your contract—certain nonrecurring items are listed, of which one is \$5,000 to the Phoenix Securities Corporation. Is that in connection with this equipment financing that you spoke of?

A. It is not.

Q. Do you mind stating what it is for?

A. That was for services that were rendered by the Phoenix in helping us negotiate, giving us their experience and actually negotiating to a great extent a previous deal.

Q. Was that in the former proceeding here, involving the Transport Company?

A. That is right.

Q. Is the same thing true of Coverdale and Colpitts?

A. No, sir; it is not. They are our consulting engineers, retained for years and years, and it is our belief, as well as of the other people here, that with the consolidation of this group they will have all of the engineering ability within this group that will be necessary.

Q. There is an item of forty-five thousand and odd dollars for bonuses to employees for the year 1940.

A. That is right.

Q. Do the officers of United Sales receive a salary?

A. One officer receives a salary, and he is the direct head of United Sales; he receives a salary; yes, sir.

Q. Who is that?

A. Wendell Simpson.

419 Q. He is vice-president, is he?

A. That is right.

Q. What salary does he receive?

A. Well—

Mr. JOSELOFF. Mr. Examiner, I do not like to interrupt at this time, but it seems to me we are going a little far afield there from the case at hand, and while I have no objection, as such, to having the last question answered, I do not see that it is relevant in this proceeding.

Mr. WIFEUD. If the counsel has any objection, I withdraw the question.

Exam. BAKER. Very well. Are there any additional questions?

Mr. WIFEUD. That is all.

Mr. JOSELOFF. I have just one further question.

Redirect examination by Mr. JOSELOFF:

Q. The earnings of the United Sales have been reported to the Interstate Commerce Commission, in the annual reports on file with that body, Mr. Arbour?

A. They have.

Exam. BAKER. That is the only question you have?

Mr. JOSELOFF. Yes.

Exam. BAKER. You are excused.

The WITNESS. Thank you.

(Witness excused.)

420 Exam. BAKER. Call your next witness.

Mr. JOSELOFF. Mr. McCarthy, will you take the stand, please?

JOHN J. MCCARTHY, being first duly sworn, testified as follows:

Direct examination by Mr. JOSELOFF:

Q. Will you give your name and address to the reporter, please?

A. John J. McCarthy, 425 Canton Avenue, Milton, Mass.

Q. What is your position and what are your duties with the McCarthy Freight System?

A. Chairman of the board and general manager; also director, McCarthy Freight System.

Q. And your position with its affiliated company, Southern New England Terminals?

A. Treasurer and director of Southern New England Terminals.

Q. I will ask you to turn to Exhibit B-7 of the application and tell us whether or not the information therein contained with regard to the McCarthy Freight System and Southern New England Terminals is correct?

A. It is.

Q. Would you wish to make one exception in the case of the statement on the authorized preferred stock of the Southern New England Terminals?

A. On the authorized number of shares of the Southern  
421 New England Terminals, there are 300 and not 500.

Q. That is a typographical error in the exhibit, Mr. McCarthy?

A. And the clerk of the Southern New England Terminals is Charles F. McCarthy.

Q. I ask you whether that figure of 500 shares is a typographical error?

A. That is so.

Q. Would you state the dates of incorporation of the McCarthy Freight System and the Southern New England Terminals?

A. McCarthy Freight System was incorporated on September 20, 1915; the Southern New England Terminals on June 16, 1930.

Q. Will you describe briefly the history and the growth of the McCarthy Freight System?

A. The McCarthy Freight System was started in 1890 and ran along as such, increasing from year to year; until 1915, the date of incorporation. From 1915 to 1937 there was natural growth, and then there were one or two small acquisitions in the meantime; but in August, 1938, the Byrolly Transportation Company of Waterbury, Conn., was merged with McCarthy Freight System.

Q. Will you describe briefly the history of the Southern New England Terminals and the nature of it?

A. The Southern New England Terminals was formed as a real estate operation, and owns the terminals which are leased to the McCarthy Freight System at a rental comparable to  
422 any other rentals that you might make.

Q. Of the terminals at the present time, how many are owned by the Southern New England Terminals; that is to say, how many of the terminals at present leased by the McCarthy Freight System?

A. There are five.

Q. How many terminals are owned by the McCarthy Freight System?

A. There are two.

Q. And all the other terminals are leased from other sources?

A. That is right. -

Q. Will you explain why it is that two of the seven terminals are owned by the Freight System and five by the affiliated company?

A. The two that are owned by the Freight System are, first, the two terminals that we built, and after we had built these two we saw that in the future we would have to do a great deal more than that, and at that particular time it was decided to be good business to form another company to handle that.

Q. Is it your opinion that the real estate operations and common carrier operations should be divorced rather than being handled by one company?

A. Well, in our particular case we thought that it was better to be handled that way.

Q. What is the nature of the business of the McCarthy  
423 Freight System?

A. We handle general commodities on a daily schedule of service.

Q. And generally what is that territory?

A. Generally, it is the States of Massachusetts, Rhode Island, and Connecticut, but we do have an additional operation——

Q. Excuse me, but before you go into that——

A. In Westchester County, New York, applying on general store merchandise.

Q. Now, those operating rights, Mr. McCarthy, are very specific and are set forth in Docket No. MC-59865, through Sub. No. 3, on file in the records of the Commission?

A. That is right.

Q. Do you wish to make reference to that for a more specific definition of your operating rights?

A. I don't know just what you mean.

Q. I say, do you wish to make reference to those docket numbers for a more specific definition of your operating rights?

A. Yes; No. 59865——

Q. I have already named them, but I was wondering whether you wished to make reference to them for a definition of your operating rights.

A. Yes.

Q. That is all on that. What intrastate rights has the McCarthy Freight System?

424 A. In those three States of Massachusetts, Rhode Island, and Connecticut, we have intrastate rights that are at least equal to, if not a little more than, the interstate rights.

Q. That is to say, interterritorial coverage.

A. That is right.

Q. And when it comes to the volume of business, how do they compare?

A. Our intrastate business is approximately 25 or 30 percent of our total business.

Q. Now, Mr. McCarthy, in connection with the business of the McCarthy Freight System, you recall, do you not, that in the prior hearing before this Commission, and particularly in connection with Dockets Nos. 1223, 1244, and 1264, there was a contract operation of the McCarthy Freight System in connection with telephone supplies.

I ask you whether or not, in the event of this application being approved, it is the intention of the management to abandon that contract operation and request permission therefor, if the Commission should so desire?

A. That is correct.

Q. Now, in addition to that operation, is there another specialized contract operation of the McCarthy Freight System?

A. There is. We do have a contract operation to handle precious metals between Fairfield County, Connecticut, on the one hand, and the metropolitan areas of New York on the other, 425 and other southern New England points. That is for the transfer of gold and silver.

Q. I will ask you, please, to explain for the record the nature of that operation.

A. Well, in that particular operation we have to have special equipment. It is all closed equipment, and it has a Babco alarm system, and the drivers all carry revolvers, and we have extra men on the trucks.

Q. These trucks are armoured trucks?

A. That is correct.

Q. And are they specially fitted and adapted to that particular type of business?

A. Yes; they are particularly built for that work, and are not much, if any value, in anything else.

Q. From the standpoint of service in connection with the handling of these precious metals, what can you tell us?

A. Well, it is a specialized service, of course, on account of the value, on the one hand, and the service demands are great, on account of fluctuations in the market.

Q. When you say that, will you please illustrate or elaborate on the demands of that service?

A. Well, the market on that changes even during the day, and unless that is delivered promptly in the morning there would be a complaint from the people receiving it, on that account.

Q. Is this equipment used exclusively for this particular type of business?

426 A. Yes.

Q. I ask you whether or not it is possible for the McCarthy Freight System to handle this kind of business under its authority from the Interstate Commerce Commission to handle general commodities, with certain exceptions.

A. Well, of course, we have excluded it from our common carrier operations.

Q. Is it specifically excluded by terms of the order defining general commodities?

A. Oh, yes.

Q. The exceptions.

A. That is correct.

Q. Do you know whether or not that similar type of designation of carriers handling general commodities, and containing the so-called usual exceptions, applies to other common carriers competing with you?

A. Yes; I know that it does.

Q. Are there any other common carriers, with reference particularly to Consolidated Motor Lines, that can handle this business under their common carrier certificates?

A. There is nobody in New England, so far as I know, with the exception, possibly, of the American Railway Express.

Q. Are they a common carrier of commodities generally?

A. Yes.

427 Q. Are they a specialized contract carrier; do you know?

A. Well, I would say that they are common carriers?

Q. Do you know whether, in their handling of these precious metals, they are handling them as a common carrier or contract carrier?

A. I could not answer that.

Q. In other words, then, as I understand your answer to my previous question, while it is your opinion that the American Express may be a common carrier similar to the McCarthy Freight System, yet you do not know what their classification is insofar as the handling of precious metals is concerned?

A. No; I do not.

Q. Aside from the American Express, is there anyone, else, common or contract, or however designated, that you know of, in New England, to handle this precious metals movement?

A. Not in referring to these particular goods and the points that are involved.

Q. In your opinion, is this movement at all competitive with the common carrier operations of the McCarthy Freight System?

A. What is that question again?

Q. Is it competitive?

A. No.

Q. With the common carrier operation?

A. No; in no way.

Q. Would it be competitive with the common carrier operations of Associated Transport, if the proposed unification were to be approved?

A. No.

Q. If this movement were to be abandoned or discontinued by the McCarthy Freight System, would the shippers suffer hardship thereby?

A. Well, of course, there is nobody at the present moment to handle it.

Q. Compared with the volume of the McCarthy Freight System, how much volume would this movement amount to?

A. Oh, perhaps in volume, it runs \$50,000 a year.

Q. And what is the volume of the Freight System for the year 1940?

A. Around \$2,000,000.

Q. So that it is relatively an insignificant part of the volume insofar as a comparative basis of dollars and cents is concerned; is that right?

A. That is true.

Q. Also with regard to the territory served by this movement, is it not a fact that a considerable portion of this movement goes to New York or points south of New York, in the New York metropolitan area, which territory is not and cannot be served except by the McCarthy Freight System?

A. That is right.

Q. From your years of experience as an operator of common carriers, is it feasible or possible to handle this movement as a common carrier?

A. No; it would be very hard, particularly from a rate standpoint, because this moves sometimes in very small quantities, as we consider tonnage, and, of course, another factor enters into it, and that is that it would, of course, be published as a common carrier, and that information would be common knowledge of what we are doing, and we do not believe that that is now the case, and in that way it would set up a lot of dangers that we feel at the present time it does not.

Q. You mean it would open up information and make it easier for anyone to watch and detect these movements; is that your point?

A. That is true. We think that at the present time there are not too many that know about it, or realize just what we are transporting.

Q. Now, in addition to this factor, from the standpoint of actual operation of the movement, does it lend itself to a common carrier operation, with regularly scheduled runs and stops?

A. No; it could not be, under any conditions. The hazard is too great.

Q. And from an operating standpoint, does it require specialized handling?

A. Yes; it does. You could not operate it—

430 Q. Now, there is a statement, I believe, in the application to the effect that the contract operations of the McCarthy Freight System would be discontinued, or permission requested of the Commission to withdraw the contract operations of the McCarthy Freight System. I believe that is correct?

A. That is.

Q. Did you have that provision in mind in regard to the first type of contract operations that you talked about—the telephone equipment and supplies?

A. That is right.

Q. How does the management of the Freight System feel with regard to this specialized movement of precious metals, gold and silver?

A. Well, we have handled this for a very long period of time, and it had a lot of headaches getting straightened out, and it has now gotten to the point where it is working very successfully for all concerned, and we consider it highly desirable business.

Q. How much tonnage is the McCarthy Freight System handling; that is, for the year 1940 and for the first six months of 1941?

A. In 1940 our tonnage was 294,522 tons; for the first six months of 1941, we handled 175,051 tons.

Q. And that, of course, is for the six periods in 1941; is that it?

431 A. That is right.

Q. Less than a half a year.

A. Yes.

Q. What is your estimate of the number of tons that the Freight System will handle for the year 1940?

A. For 1940?

Q. 1941. I beg your pardon.

A. I would say we would handle approximately 400,000 tons.

Q. Now, of this tonnage, Mr. McCarthy, how much approximately is interchange freight?

A. Ten percent.

Q. Will you name your principal interchange points and the carriers?

A. Yes; M. Moran Transportation Lines at Pittsfield, Mass., and Schenectady, N. Y.; H. P. Welch Company at Boston and Springfield; Alger Brothers at Boston; Devereaux Brothers at Waterbury, and Franklin Auto Delivery Service at Bridgeport.

Q. What percentage of your interchange freight is handled with M. Moran Transportation Lines, which, I take it, is the only carrier in the proposed unification with whom the Freight System interchanges?

A. About 4 percent of the 10.

Q. If the proposed unification were to be approved, would there be, in your opinion, any diversion of interchange of freight from the carriers with whom you are now interchanging freight, and who are non-members of the proposed unification?

A. No; there could not be any.

Q. Why?

A. Because the others go in a different direction, and we have no service there.

Q. I want to clear up one point for the record, Mr. McCarthy. In connection with the amount of interchange of freight with the M. Moran Transportation Lines, is it 4 percent of the total amount of the interchange freight, or 4 percent of the volume?

A. Four percent of the ten. We have ten percent of interchange freight. Four percent of that is with Moran.

Q. In other words, you mean 4 percent.

A. Well, about half of our interchange business is with Moran.

Q. That clears it up. Thank you.

A. That is it.

Q. Do you think it would be of advantage of the Freight System to have operating rights beyond its lines, particularly to Metropolitan New York and points beyond?

A. Yes; as a matter of fact, for 2 years we have attempted negotiations to buy rights into the New York Metropolitan area, but on account of Transport application, and what not, we hesitated, and even after that, during this year, we have hesitated about doing anything.

433 Q. Would that have any effect on the present load factor of the McCarthy Freight System?

A. Well, of course, we do not hit any large metropolitan area after we leave Boston, and there is a very heavy flow of traffic to what we call south, and, of course, in ordinary times you really need to hit another metropolitan area to have a good load factor.

Q. What is the present load factor of the McCarthy Freight System?

A. Of course, at the present time, it is about normal, but I say that in normal times it would, perhaps, be around 75 percent.

Q. Did you say at the present time?

A. At the present time it might go up to, say, 80 percent.

You see, then, an increase in this load factor resulting if approval be had of the proposed unification?

A. Oh, very definitely.

Q. Will you explain the maintenance set-up of the Freight System?

A. We have throughout the system two major repair shops, one at Taunton, Mass., and the other at Springfield. In most of the other terminals we have mechanics for minor repair work.

Q. Do you have a system of safety patrols similar to the Consolidated Motor Lines?

A. No; we have not.

434 Q. You were here when Mr. Arbour testified about the system of safety patrols that the Consolidated uses?

A. That is right.

Q. Do you think they could be used to advantage with all of the other methods of the proposed unification, including the McCarthy Freight System?

A. There is no question about that.

Q. You heard Mr. Horton, Mr. Seymour, and Mr. Arbour testify on the extension of the scientific maintenance program, particularly with reference to preventive maintenance. Do you see that as a definite advantage to all of the companies?

A. There is no question about it. We have attempted to do some of it in our own small way.

Q. Can you see room for an extension of that service in your own organization?

A. There is no question about that.

Exam. BAKER. Mr. Joseloff, is this a good place to stop for lunch?

Mr. JOSELOFF. I would like to ask the witness one question, and than I think it would be convenient.

Exam. BAKER. All right.

By Mr. JOSELOFF:

Q. Is the insurance coverage of the McCarthy Freight System above the requirements in all instances set by the Interstate Commerce Commission?

A. Yes; very much so.

435 Q. And is the coverage complete and on all kinds of risks?

A. That is correct.

Q. And are statistics of that coverage on file with the Interstate Commerce Commission?

A. They are.

Mr. JOSELOFF. That is all—I mean for the moment.

Exam. BAKER. Mr. Mann; do you want to enter an oral appearance?

Mr. MANN. Yes; for the National Industrial Traffic League, I wish to enter the appearance of James D. Mann, 450 Munsey Building, Washington, D. C.

Exam. BAKER. Are you a registered practitioner?

Mr. MANN. Yes; I am.

Exam. BAKER. What is your position in this matter?

Mr. MANN. The League has not taken a position in this matter as yet, but we thought we should enter our appearance and see what develops.

Exam. BAKER. Very well.

We will recess until 2 o'clock p. m.

(Whereupon, at 12:30 o'clock p. m., a recess was taken until 2 o'clock p. m. of the same day.)

VOL. II  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 31

McLEAN TRUCKING COMPANY, INC., THE SECRETARY OF AGRICULTURE OF THE UNITED STATES, AND AMERICAN FARM BUREAU FEDERATION, APPELLANTS

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ASSOCIATED TRANSPORT, INC., BARNWELL BROTHERS, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

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1 In District Court of the United States for the Southern  
District of New York

Civil Action No. 18-116

McLEAN TRUCKING COMPANY, INC., PLAINTIFF

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ASSOCIATED TRANSPORT, INC., ARROW CARRIER CORPORATION, BARNWELL BROTHERS, INCORPORATED, CONSOLIDATED MOTOR LINES, INCORPORATED, HORTON MOTOR LINES, INCORPORATED, MCCARTHY FREIGHT SYSTEM, INC., M. MORAN TRANSPORTATION LINES, INC., SOUTHEASTERN MOTOR LINES, INCORPORATED, TRANSPORTATION, INCORPORATED, THE TRANSPORT COMPANY, KUHN, LOEB & COMPANY, BARNWELL WAREHOUSE & BROKERAGE COMPANY, BROWN EQUIPMENT & MANUFACTURING COMPANY, CONGER REALTY COMPANY, AND SOUTHERN NEW ENGLAND TERMINALS, INC., DEFENDANTS

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AFTERNOON SESSION—2:00 P. M.

Exam. BAKER. Let us resume, gentlemen.

JOHN J. MCCARTHY, resumed the stand and testified further as follows:

Direct examination (continued) by Mr. JOSELOFF:

Q. Mr. McCarthy, concerning the contract dated June 11, 1941, with Associated Transport, Inc., by the stockholders of the McCarthy Freight System, is it substantially the same as the Horton contract set forth in Exhibit C-1 of the application, except as otherwise set forth in Exhibit C-1 (b) of the application?

A. Yes; that is right.

Q. And is one hundred percent of the stock of the McCarthy Freight System to be exchanged for Associated stock?

A. That is right.

Q. With regard to the contract of June 11, 1941, with Associated Transport, Inc., by the stockholders of the Southern New England Terminals, is that contract substantially the same as the Conger contract in Exhibit C-1 (a) of the application, except as otherwise set forth in Exhibit C-1 (b)?

A. That is right.

Q. And is a hundred percent of the stock of Southern New England Terminals to be exchanged for stock of the Associated Transport, Inc.?

A. Yes.

437 Q. Mr. McCarthy, were you here while Mr. Horton, Mr. Seymour, and Mr. Arbour testified as to the benefits which would result if the proposed unification were to be approved by the Interstate Commerce Commission?

A. Yes.

Q. And did you listen to and are you familiar with and recall their testimony?

A. Yes.

Q. Do you concur in the statements made by them as to the benefits both to the public, to the shippers, and to the companies?

A. That is right.

Q. Is there anything that you would care to add to the benefits of consolidation in addition to what they had said or in elaboration so far as any particular factors which occur to you?

A. Well, in my opinion, the majority of the trucking companies were not properly capitalized to begin with. I know in our particular case we have in years past put a lot of money into terminals and what not, and it has reached a point where we have gone about as far as we could. It is not fair, I don't think, to ask stockholders continually to keep putting back in money and take out nothing at all for themselves in any way. And it is impossible practically

438 for a company of our size to go out in the market and sell securities to be used for capital, and under this we believe that that is possible.

In years past, of course, I think the load factor is the determining factor. That is my opinion, of course. And, of course, the load factors are as good as they ever have been at the present time.

Which brings up another situation. We being a public servant, and we serve the public, we have at the present time demands on us to handle additional tonnage. Well, it still means the stockholders have to either go into their pockets or try to raise money and guarantee it and what not to take care of that particular thing at the present time. With that in mind, there is no guarantee how long it will exist. They will be committed to commit themselves on these obligations, and if something changes within a short period of time, why, they will find themselves in a very bad state of affairs.

Furthermore, with the tax situation as it is at the present time, I know that we, and we believe others, will pay our taxes next year out of our income next year, because we have not the capital to do otherwise. That being so, when we come to a time when there is a downgrade and there will be no income that year to take care of our taxes, well it is hard to tell what the results will be.

That, in my opinion, will affect many carriers, some more than others, and it could go to a point of disaster.

With that in mind we certainly have looked ahead that far, and we would like to see the proper capital put into the business to prevent that.

Q. In your opinion, is the cash balance of McCarthy Freight System at the present time adequate for working capital?

A. No; it is not, not in our opinion.

Q. I am asking you, of course, your own opinion.

A. That is right.

Q. How much additional cash would you need?

A. Well, at the present time around \$300,000. I think that \$350,000 is enough. We think that there should be \$100,000 in that particular case. We feel we should have at least \$200,000.

Q. In addition to what you already have, Mr. McCarthy?

A. To what we have at the present time.

Q. That is, in addition to what you have at the present time?

A. That is right.

Q. What has your average cash balance been for the past two years?

A. Well, for the past two years I don't know. I would say for the past year a little more, perhaps around \$60,000.

Q. So that would make a total roughly of \$250,000 for working capital?

A. That is right.

Q. Now, you heard Mr. Arbour testify specifically as to advantages which could be accorded to Consolidated's customers insofar as the area in which the McCarthy Freight System is strong and Consolidated weak—the southeastern section of Massachusetts; and then he made further reference to the fact that a similar situation would exist in parts of Connecticut where the McCarthy Freight System is comparatively weak and the Consolidated strong. Do you concur in that opinion?

A. I do.

Q. What can you tell us, Mr. McCarthy, about shipments, or the demand of shippers in New England for shipments moving to southern points?

A. We do have some demand. I had a case here within a week where a shipper in Fall River had to move some silk to, I think, Hazleton, Pennsylvania. He called us at 4 o'clock in the afternoon. It had to be there so a draft could be secured from the bank before noon the next day. We told him it was impossible. It so happened we had no connection to New York where we could meet up with somebody. As far as operations of trucks are concerned, there are many factors to be considered. Take out of Fall River, there is no question there is a service to New York. This had to be a special service.

Q. Is that Fall River, Mass., that you are talking about?

A. Fall River, Mass. In this particular case the people that had the service from New York to Fall River had no special  
441 equipment that on a few minutes notice they could put into operation. They were willing to pay for expedited service and what not. But, of course, they wanted to connect up with Arrow Carrier in New York, and of course we just could not meet because we did not have the rights to go far enough. Neither did Arrow Carrier. We had to turn it down. I don't know what he finally did on it, but that being in our neck of the woods, that is where our surplus of equipment would be, so we could handle that. We do have such things as that.

Q. Do you recall Mr. Arbour's testimony on competition remaining in New England?

A. Yes.

Q. And you are familiar, are you not, with applicant's Exhibit 3 which has been introduced by Mr. Arbour—

A. That is right.

Q. —depicting competition in New England and other surrounding points. I ask you whether or not you concur in Mr. Arbour's testimony in that regard.

A. I do.

Q. Is the fact that it is proposed to retain the present management in Association Transport of benefit insofar as shippers are concerned?

A. It is a very vital factor. As a matter of fact, I  
442 would not go along with anything where they did not do it.

Q. Do you know of your own knowledge of shippers' reaction to that retention of management?

A. No question about that in our business.

Exam. BAKER. Will you keep your voice up a little higher, please.  
The WITNESS. All right, sir.

By Mr. JOSELOFF:

Q. Mr. McCarthy, I believe you testified this morning of a merger or acquisition by McCarthy Freight System of Raleigh Transportation Company in 1938.

A. That is right.

Q. I ask you whether or not that was a substantial acquisition.

A. Yes, sir; very substantial, I would say.

Q. Will you please state what the effect of that acquisition was upon the number of employees of both companies?

A. Well, after the merger, or very shortly after, we increased the number of employees.

Q. And whether or not that number has increased since the merger?

A. Oh, it has increased quite a lot since that.

Q. Now, based on your actual experience and your knowledge of the trucking business, what, in your opinion, would the effect of the proposed unification if approved be on the number of employees of these various companies?

443 A. Well, in my opinion, on a good merger there isn't any—there are not any less. It usually becomes stronger and would require more.

Q. And would that apply to this particular case, in your opinion?

A. There is no question at the present time.

Mr. JOSELOFF. That is all I have, Mr. Examiner.

Exam. BAKER. Cross-examination.

Cross-examination by Mr. TOBIN:

Q. Mr. McCarthy, this Raleigh Transportation Company, how many employees did they have before the merger?

A. I don't know exactly, but I would say—I would have to guess. That is three years ago. Well, they had, say, 300 or so; quite substantial.

Q. How many terminals did they have?

A. Oh, they had at least twelve.

Q. Did you continue those twelve terminals?

A. We combined them, yes.

Q. You combined them?

A. Yes.

Q. By combining them what do you mean?

A. Well, most places—well, in some places we moved into his; in other places he moved into ours.

Q. So that it displaced some of the terminals in the long run?

A. Well—

Q. Well, you had a terminal—

444 A. That is right. Oh, yes.

Mr. TOBIN. That is all.

By Mr. JOSELOFF:

Q. Mr. McCarthy, in displacing these terminals did the new terminals—did it result in an enlargement of the terminals?

A. Oh, yes.

Q. And did it result in an increase rather than a decrease in the number of terminals?

A. Well, the result is that in the past three years we had to build five of our own on account of it. Those five new ones were built because we could not get terminals to take care of us. That has all been within the last two or three years.

By Mr. TOBIN:

Q. On your increasing facilities in these terminals that you have taken over, have you any figures on employees in those terminals?

A. No.

Q. That you can show that you had an increase of employees or a decrease of employees in those terminals?

A. No. I would say in every terminal we had an increase.

Q. At the time of the merger?

A. Shortly afterward.

Q. Yes.

Mr. Tobin. That is all.

By Mr. WIPRUD:

445 Q. Mr. McCarthy, what is the load factor which you consider necessary to a successful truck operation?

A. Well, that is very hard to answer. We operate—I know of operations in a certain territory that the load factor is very poor. In those cases that is taken care of—in some cases—through difference in rates; I mean between two particular points where you have got an extreme load factor, naturally the rates are more.

Q. Well, in this particular territory in which you operate what would you consider a load factor necessary to successful operation?

A. Well, I would say 75 percent would be considered successful.

Q. And if I understand your testimony correctly, your operation requires additional working capital; is that correct?

A. That is right.

Q. Is it customary for lines requiring additional capital to pay bonuses to their executives?

A. It depends on what their salaries are.

Q. Well, let us take your line. In Exhibit 1—referring to Exhibit 1 attached to your contract in the application it shows bonuses of \$15,832.50.

Mr. JOSELOFF. Mr. Wiprud, you mean Exhibit I.

Mr. WIPRUD. I beg your pardon. Exhibit I.

By Mr. WIPRUD:

Q. Is that in addition to salaries paid the executives?

A. I think those bonuses extend beyond the officers.

446 Q. Well, does the major portion of them go to officers of the company?

A. Well, I would say a good share of it.

Q. Well, do you think the company is justified in paying bonuses when it is short of working capital?

A. I don't call those bonuses very substantial.

**Q.** Well, did you hear the testimony of the previous witness, the president of Consolidated, that they had paid \$45,000 in bonuses and yet they needed working capital?

**A.** I did not hear him.

**Q.** Who are the stockholders, Mr. McCarthy, of the Southern New England Terminals?

**A.** I haven't a list of them.

**Mr. JOSELOFF.** May I say for the record they are listed in Exhibit A of the application.

**Mr. WIPRUD.** I did not find it, Mr. Examiner. If counsel will point it out here—May I have a moment? Just off the record.

**Exam. BAKER.** Off the record.

(Discussion off the record.)

**By Mr. WIPRUD:**

**Q.** Referring to Exhibit I again attached to the contract, Mr. McCarthy, what does it show in regard to officers' bonuses?

**Mr. JOSELOFF.** Which contract do you have in mind, Mr. Wiprud?

447 **A.** \$3,000.

**Exam. BAKER.** Just a moment. I think we will have the record confused. If counsel will address all the remarks to the Examiner and not two or three talking at once, the record will be in better shape. What is the last question?

(The record was read.)

**Exam. BAKER.** Mr. Wiprud, will you answer Mr. Joseloff's question, which contract?

**Mr. WIPRUD.** I have in mind, Mr. Examiner, the contract relating to Southern New England Terminals, Inc.

**Exam. BAKER.** Mr. McCarthy, did your answer relate to Southern New England Terminals, Inc.?

**The WITNESS.** That is right. \$3,000 is the answer.

**Exam. BAKER.** Proceed.

**By Mr. WIPRUD:**

**Q.** Are there any salaries paid officials of that company?

**A.** No, sir; no salaries whatsoever.

**Q.** Just briefly, Mr. McCarthy, is this a company merely organized for the purpose of holding this Terminal property?

**A.** That is correct.

**Q.** And this company pays, of course, all amounts required under the respective leases and so forth to the owners of the properties leased?

**A.** I don't just understand your question.

448 **Q.** Well, some of the Terminal's properties are leased, are they not?

A. That is right.

Q. And all of those properties are in the name of Southern New England Terminal, Inc.?

A. No. You mean we lease other terminals from other people other than the Southern New England? McCarthy Freight System does. In that case they lease them direct.

Q. They lease them direct?

A. That is right.

Q. This company, then, has been organized for the purpose of holding leases on certain other terminals?

A. That is right.

EXAM. BAKER. Mr. McCarthy, do you mean the Southern New England leases certain property and then releases it to McCarthy?

THE WITNESS. No. The Southern New England Terminals have bought property and built terminals, which in turn they lease to the McCarthy Freight System. That is their sole function. Then the McCarthy Freight System has other leases with other people for terminals that they hold direct.

EXAM. BAKER. That is what I wanted to clarify.

THE WITNESS. Yes.

EXAM. BAKER. The only property leased to McCarthy is the property owned by Southern New England Terminals.

449 THE WITNESS. That is correct.

MR. WIPRUD. That is all, Mr. Examiner.

Redirect examination by Mr. JOSELOFF:

Q. Mr. McCarthy, I think you stated that, in your opinion, as far as your company was concerned a 75 percent load factor was enough for a successful operation, or words to that effect. Is that correct?

A. Yes; I said that in the question if it were possible or was it possible; that is, I do not say that applies to everybody or in every location.

Q. Now, with regard to your company, do you consider that the ultimate goal insofar as your own load factor is concerned, or do you consider that an improvement on that load factor is desirable?

A. Of course, we are not satisfied, or should not be, unless we had a hundred percent, naturally.

Q. Well, with regard to the financial strength of the Freight System, would it be desirable to improve that load factor?

A. Yes; it would, of course.

Q. And are you constantly striving for a goal increasing your load factor?

A. That is true.

Q With regard to the matter of bonuses as it affects the need for working capital, whether or not you consider the bonuses as just and fair compensation for officers and not in the nature of depleting cash of the Freight System.

450 A. Well, I could spend a lot of time on that, but they are certainly not out of proportion to the business that we have done. And, furthermore, considering all of the facts which led up to this particular point, many times we went to no salary at all.

Q. Well, in other words, is it a fact that the salaries as they existed prior to the bonuses were considered by the management as inadequate for the actual work done?

A. That is true.

Q. And you were asked whether that would apply in the case of Consolidated Motor Lines. Do you know whether it applies in that case? What is that?

A. Excuse me.

Q. Do you know whether that situation would apply in the case of Consolidated Motor Lines?

A. I would not be in a position to answer that.

By Exam. BAKER:

Q. Mr. McCarthy, during the periods in which you paid these bonuses the McCarthy Freight System operated at a profit, did it not?

A. Yes.

Q. A substantial profit, would you say? Well, it is in the record.

A. Yes; I would say it is a fair profit.

451 Q. I believe I asked the same question of Mr. Arbour, but I will also ask you. The map indicates that the McCarthy Freight System operates into New York City. Is your operation into New York a general commodity operation, or just what is it?

A. No; it is not. I stated that we have a limited right into Westchester County on chain-store supplies, and we have that contract operation in New York on the precious metal, but not on general commodities in either case.

Q. How near to New York City do your routes extend so far as the general commodities?

A. Practically right to the Connecticut-New York line, on the shore.

Q. With respect to your contract operations in the transportation of precious metals, do you haul any commodities such as equipment used in connection with precious metals, or in the transportation of those special commodities?

A. Not that I know of.

Q. It is my understanding that you claim rights not only as to precious metals, but as to certain supplies and equipment used by persons dealing in those metals. Is my understanding incorrect?

A. Well, if that is in there, that must be what the application is.

452 Mr. JOSELOFF. Perhaps I could clear that point for the record, Mr. Examiner. Don't you have in mind the containers that are incidental to the hauling of those gold and silver bars?

The WITNESS. That is true.

By Exam. BAKER:

Q. What kind of shippers do you serve in connection with that contract carrier operation?

A. A lot of the material goes into silversmith up around Providence, in that vicinity, where a great deal of silverware is made. In the New York operation, why, the bullion, I think as they call it, we handle that between the bank and the plant.

Q. In the event the transactions involved were approved by the Commission and consummated do you feel that Associated Transport, Inc., will be likely to serve the same shippers as a common carrier which they would serve in connection with the contract operations which you have described?

A. No; I would not say so.

Q. I believe you referred to the practice of paying income taxes, say, for the year 1940 out of 1941 income.

A. Yes.

Q. The accounting regulations of the Commission, of course, make provision for income taxes. Is it your practice or not to actually establish a reserve for the payment of income taxes, or is that merely a bookkeeping entry so far as you are concerned?

453 A. Well, we have attempted to do it both ways. We have set up some reserve for it. Many times it is inadequate.

Q. In connection with the merger by Raleigh Transportation Company into McCarthy Freight System, you stated that the number of employees was increased shortly after the merger. By that do you mean the aggregate number employed by McCarthy and by Raleigh?

A. That is right.

Q. Did you take over all of the activities of Raleigh when the merger was consummated?

A. That is right.

Q. Are you having any difficulty at the present time in securing sufficient skilled employees?

A. Very much.

Q. Does that apply to drivers?

A. It applies to drivers, helpers, and mechanics.

Q. Who would you say is your principal competitor?

A. Well, we have about—well, of course, in different localities we have different ones throughout the whole system. Why, I would say that Adley Express is one. Seaboard Freight Lines is another. And between different localities there are, of course—Consolidated is a competitor of ours also. But in different localities. In Connecticut we have a great number; say, from Connecticut competing into the Providence area, and then from Boston to the western part of Massachusetts, Connecticut, we have another group.

454 Q. Well, taking an over-all picture, would you say the Consolidated is the most competition you have?

A. If you take any particular one, that might be so.

Q. Well, is it true, or not? Will you state that?

A. Well, they are very competitive. There is no question.

Q. Consolidated is the only one of the carriers involved in this application with which you do compete, is it not?

A. That is right.

Exam. BAKER. That is all the questions I have.

By Mr. JOSELOFF:

Q. Is the New England Transportation Company very competitive with McCarthy Freight System?

A. Very much so.

Q. Would you put that in the same class as Adley Express or Seaboard or Consolidated?

A. New England Transportation competes in more points and over more of our territory than any of the others.

By Exam. BAKER:

Q. Here is one more question I intended to ask you. I understand from a statement of a previous witness that you interchange trailers with Moran. Is that correct?

A. That is right.

Q. Will you describe for the record just how that is working out?

A. Well, we interchange a lot at Pittsfield with Moran. Of course, we are in constant trouble with our mechanical  
455 department on account of the difference in equipment between the two. Of course, as far as our operating men are concerned, they try not to give Moran any of our better equipment, and I think the same holds true in Moran's operation, in that our men look out for our interests first, and Moran comes later, and I

think they exercise the same policy, so that there is a lot of confusion, and there is more or less dispute over damages, repairs, and what not so that it is not the most loveable arrangement that anybody could have.

**Q.** From the shipper's standpoint how does it work out? Does he get the service?

**A.** Yes. Of course, we can give that through service, and we do. In some cases we have to give it.

**Q.** Do you operate through trailers as a regular thing; that is, daily schedules, or is it just occasionally?

**A.** No; there is a movement daily. How many, there is no definite or particular set-up. But if we get from any one particular point a load going from Syracuse to Buffalo and it happens to be a straight load, in many cases it can't be shifted; it has to move through. So I will say each day there is some moving. We have not set up a definite one hundred percent operation where we interchange everything.

**Q.** In order to make such interchange feasible is it necessary that your equipment be more or less standardized?

**A.** Yes. There are many things that enter into it. For instance, Moran uses a lot of closed vans. In our particular territory we have a lot of brass and steel moving that we have to use cranes on. And we run into a situation once in a while where, say, in the City of Bridgeport they will want a half dozen open vans and tomorrow morning we will find we have four or five closed ones. Well, we have to move them between one point and another.

Another thing we get from Moran a lot, they have different sizes—and we have a name for them—and we get them into our territory and they are no good to us. They are small, and what not, and they just don't fit, and our operating department has a real headache moving them. By the same token, why, in New York State they can load a little heavier, and we set up our equipment based on a certain maximum load, and they get some of our long trailers up there, and they certainly can load them more than we want them loaded.

**Exam. BAKER.** Any more questions of this witness?

**By Mr. SULLIVAN:**

**Q.** Mr. McCarthy, it is a fact that the operating departments always try to use the smallest piece of equipment that will carry the load if they have got more than one size so as to reserve the larger ones for themselves in their own territory?

**A.** That is true.

**Q.** And they don't worry much about the fellow at the other end of the line as to what he is going to do with it?

457 A. No. That is mostly my job to straighten them out.

Q. And that entails—this exchange of equipment as between Moran and McCarthy entails considerable telephoning and work on the part of the general officers of the company trying to settle the squabbles of the people underneath, does it not?

A. That is true. I imagine it exists everywhere. The men we got are working for McCarthy every minute. There is no question about the men that Moran have, but they are working for Moran. They do—they get us into a lot of trouble.

Exam. BAKER. Witness excused.

(Witness excused.)

Mr. SULLIVAN. Are you finished?

Mr. JOSELOFF. Yes; I am finished.

Mr. SULLIVAN. All right. The next witness will be Mr. Arnold.

JAMES S. ARNOLD, being first duly sworn testified as follows:

Mr. SULLIVAN. I will state at this time, Mr. Examiner, that Mr. Arnold will be followed by Mr. Ackerman and Mr. Whitehead, heads of the Arrow Company. Mr. Arnold is from the Transport Company; and because Mr. Arnold has been indisposed for the past two days I am going to save some of the questions I otherwise might have asked him and have them answered by Mr. Ackerman

who is also in a position to answer them, so that I am going to try to be as brief with Mr. Arnold as much as possible.

458

Exam. BAKER. Very well.

Direct examination by Mr. SULLIVAN:

Q. Please state your full name for the record.

A. James S. Arnold.

Exam. BAKER. And will you state your address.

The WITNESS. Care of Kuhn, Loeb & Company, 52 William Street, New York.

By Mr. SULLIVAN:

Q. You have referred in giving your address, Mr. Arnold, to the firm of Kuhn, Loeb & Company. Are you employed by that firm?

A. I am employed by Kuhn, Loeb & Company; yes, sir.

Q. And in what capacity are you employed by that firm?

A. I am the head of the statistical department.

Q. What is the business of Kuhn, Loeb & Company?

A. They are what is commonly referred to as investment bankers. As that business is now restricted, it limits itself to the purchasing of issues of securities from companies or other organizations and reselling them to other dealers or to insurance companies, and so forth; in other words, distributing.

Q. In conjunction with your employment by that firm, or because of that, have you become an officer of a company known as the Transport Company?

A. I am the vice-president and the treasurer of the Transport Company.

Q. And will you tell us what sort of a company the Transport Company is?

A. The Transport Company was organized in 1940 as the vehicle by means of which the consolidation of trucking lines in the eastern seaboard that was attempted last year was to be accomplished. That having failed to receive the approval of the Commission, the Transport Company found itself in the possession of certain valuable assets. It therefore became necessary for the company to continue its existence.

Q. Are you finished with your answer?

A. Yes.

Q. Who are the stockholders of the Transport Company?

A. The entire amount of issued stock of the Transport Company is held in the name of Kuhn, Loeb & Company.

Q. Who are the directors of the Transport Company?

A. Mr. Charles B. Wiggin, and Mr. Charles E. Cotterill, and Mr. J. S. Arnold—James S. Arnold.

Q. That is, you are one of the directors of that company?

A. I am one of the directors.

Q. Now, did that company during this period of the activity of the company with respect to the truck merger to which you have referred enter into certain contracts relative to the purchase of a common carrier corporation known as the Arrow Carrier Corporation?

460 A. The Transport Company at that time executed contracts with a number of trucking companies, all contingent upon the merger being approved by the Interstate Commerce Commission, and some few weeks, or—well, some few weeks after the general run of the contracts were executed, including the one with Arrow Carrier, a special contract was made with Arrow Carrier which virtually amounted to the waiving of that provision in the original contract, that in case the Interstate Commerce Commission disapproved the merger that the contract would cease to exist. So that after the Commerce Commission had disapproved the old Transport Company merger in 1940, then the Transport Company was relieved of all its obligations to all of the companies except Arrow. It still was under the original obligation to purchase Arrow at the price specified in the original contract.

Q. Just to divert for a second, Mr. Arnold, and for the sake of the record, the I. C. C. numbers in this amendment to which you have referred were M. C. 1223, 1244, and 1264.

A. I will have to accept your figures on that.  
Q. Well, I thought the record should show that.  
Exam. BAKER. MC-F, it should be.  
Mr. SULLIVAN. Yes, MC-F.

By Mr. SULLIVAN:

Q. Now, then, these contracts that were entered into, or this modification of the original contract with the Arrow Company—it really was with the stockholders of the Arrow Company, was it not?  
461

A. It was with the stockholders.

Q. This modification took place somewhere around the month of September 1940, and prior to the Commission's decision?

A. It was the 23rd of September, I think.

Q. And at the same time that the modification of the contract took place with respect to the obligation of the Transport Company to acquire the stock of Arrow, was there a supplemental contract with respect to leasing the properties, the operating property of Arrow, entered into?

A. The Transport Company leased the operating properties of Arrow Carrier Corporation.

Q. Now, will you carry on from there, Mr. Arnold, and tell us what happened next with respect to that Arrow-Transport transaction?

A. As originally set up the contract called for the taking over of the property and paying the remaining unpaid balance due on March the 7th, 1941, and on or about March the 7th—effective as of March the 7th, at least, there was an exchange of letters between the Transport Company and the Arrow stockholders by which both the agreement to purchase and the lease were extended for 30 days. Then at the expiration of that 30 days, which would bring it up to approximately April 7—and I want to mention now while

it is on my mind that I am not testifying that all of these  
462 papers were precisely executed upon these dates, March the 7th and April 7, because there were certain circumstances

which made it—as long as there was no question, no lack of confidence in the good faith of either, that we occasionally let the thing go over the week end and we would fix it up as of that date, but the theoretical dates were March the 7th and April the 7th. So that when the contract expired for the second time on April 7, 1941, they were then renewed, the agreement to purchase being renewed until December the 18th, 1941, but the lease was renewed until December 31, 1941. I do not think there was any deliberate reason why the lease was put for the longer period, but it was. It was one of those things that sometimes happen.

Q. Was some money paid to the stockholders of the Arrow Carrier Corporation by the Transport Company?

A. At the original date of September 23 when the contract was taken over free of the contingency involving the Commission's decision, the Transport Company paid to the—I think the funds were turned over to Mr. Ackerman as something in the nature of a trustee for the stockholders—the sum of \$100,000, which was to go toward the payment and the obligation remaining to pay for the rest when we took it up. Then at the—on March 7, 1941, my recollection is that Mr. Ackerman, in recognition of the fact that circumstances were so set that it seemed the decent thing to do, pushed the agreement on 30 days without any payment.

463. Q. Excuse me. Just—

A. Without any additional payment.

Q. Just so we carry the record along, who is Mr. Ackerman?

A. Mr. Ackerman is the president of the Arrow Carrier Corporation.

Q. And one of the principal stockholders?

A. And one of the principal stockholders.

Q. I did not mean to interrupt you.

A. Yes. So when the agreements expired the second time we felt that it was desirable to have them renewed for a longer and somewhat more definite period. Then after some negotiations it was settled to extend the agreements, and the consideration being that the Transport Company purchase from the Arrow stockholders some \$107,000 worth of preferred stock, 1,070 shares, if my memory holds good, at par, which was done. The transfer was made and the stock is now held by the Transport Company.

Q. So that—oh, yes; one more thing further. Under this lease arrangement does it sufficiently describe or say that it was a lease arrangement under which the consideration for the lease would be more or less equal to the profits earned by Arrow during the period of the lease?

A. The lease did specify that the rental would be the net profits, the net operating income or net profits—in fact, net income I think was the word used.

464. Q. Well, may we say it this way; Mr. Arnold, that as of the present time Kuhn & Loeb owns—or, rather, the Transport Company owns \$107,000 worth or 1,070 shares of the preferred stock?

A. We have a little more than that now. In other words, your records will not show holding exactly 1,070 shares. They bought some small number; I believe it was \$25,000 worth more, something like that. Possibly later someone is going to give the figure.

Q. That will be developed later. I think it was 50 shares.

A. Well, whatever it was.

Q. And that preferred stock was purchased from stockholders who had not been a party to the original transaction?

A. The second purchase was from what you might say outside holders.

Q. Well, then, Mr. Arnold, the situation as it rests at the present time is substantially that the Transport Company owns its preferred stock which you have described; it has a contract expiring on the 18th day of December 1941, by virtue of which contract, upon payment of the balance of the purchase price, of which they have already paid \$100,000, the Transport Company can pick up all the remaining outstanding common stock of the Arrow Carrier Corporation?

A. Yes; sir.

Q. Now, then with the Transport Company in possession  
465 of that agreement, and with the facts as you have described them, did there come a time when negotiations were entered into between the Transport Company and the Associated Transport Company, the applicant here?

A. Yes, sir.

Q. And that was some time last spring, was it?

A. Well, yes; it began in the spring.

Q. Those negotiations continued for quite a time?

A. They were quite protracted.

Q. You participated in them?

A. To some extent.

Q. And various of the truck operators who are appearing here constituting the directorate of the Associated Transport along with Mr. Seymour acted for the Transport Company. Well, as a result of those negotiations did there come a time when a contract was entered into between the Transport Company and the Associated Transport Company, the applicant here?

A. Yes, sir.

Q. And that contract was entered into some day subsequently to the entering into of contracts between Associated Transport and the various other companies?

A. You practically had your organization—that is, had everybody else in the contract. At the time Arrow signed up we made,  
as I remember, the 9th one.

466 Q. I believe it was the 8th.

A. Was it the 8th? Well, whichever it was, we were the last one.

Q. And will you give us the reasons why that was not consummated at the same time?

A. Largely because we could not come to a meeting of the minds as to what the Arrow Carrier Corporation was worth.

Q. Were there certain specific requests that the representatives for the Associated Transport demanded that the Transport Company comply with respect to Arrow before they would enter into a contract?

A. There were requests, or you might say something in the nature of demands by the Associated Transport, Inc., that they abolish certain contracts, commitments that were involved in the contract; and on the other hand there was a certain feeling on the part of Transport Company that they were entitled to some special treatment owing to some conditions which we felt adhered to Arrow rather than to the other companies. The result was that the negotiations, or the dickering, you might almost say, went on and on and on, and it was finally settled the way things usually are, one fellow not getting as much as he would like to get, and the other fellow feels the same way, but they eventually have a meeting of the minds, and that is what occurred in this case.

Q. The final result was somewhat expedited, was it not, 467 by the fact that the deal was closed with the other companies and the petition about to be submitted to the Interstate Commerce Commission?

A. That hurried things. I think it hurried both sides.

Mr. WIPRUD. I think perhaps the witness should testify.

Mr. SULLIVAN. I suppose I am leading. I did not think it was that important.

By Mr. SULLIVAN:

Q. Well, anyway, Mr. Arnold, the contract, of course, is made a part of the exhibit here. Now, when you spoke of the question of some contracts, was that confined to one employment contract?

A. It came down to one employment contract.

Q. And that was a contract with respect to whom?

A. Mr. Hamilton. John Hamilton, I believe his name was, but I am subject to correction as to that.

Q. Will you tell us, please, what the situation was with respect to employment contracts of the Arrow Company?

A. In the original contract that was drawn up, by which the Transport Company was to purchase the Arrow Carrier, there were included in that contract employment contracts for four officers, Mr. Ackerman, Mr. Buckley, Mr. Whitehead, and Mr. Hamilton. I think that was all, to the best of my recollection.

Q. Well, do you know whether or not they were the operating officers?

468 A. At the time the original contract was made I understood that those were the operating men of Arrow Carrier Corporation.

Q. Now, then, what transpired with respect to the contract with Mr. Hamilton?

A. We undertook to have Mr. Hamilton forego the benefits that he would receive through that contract, and when first approached Mr. Hamilton, of course, declined to just simply surrender his rights to five years annuity for nothing, and someone of the Arrow organization—I do not recall which one it was—made the suggestion if they thought he would commute the contract at a reasonable figure, so that we finally got in touch with him, and the result of the various talks was that he decided to commute his contract for a payment of \$12,000, the \$12,000 to be paid out of the assets of the Arrow Carrier Corporation, and that was—the contract to do that was made with the Transport Company that they were bound by it, that they would pay Hamilton \$12,000. I just forget what the date was. It has not been paid yet.

Q. Well, that was contingent, was it not, upon the approval and consummation of this proposed transaction?

A. Yes—the \$12,000 for giving up that labor contract.

Q. And what was the result that was provided for with respect to any diminution of the preferred stock which Transport would receive?

A. The formula, as I refer to it, under which all of the 469 contracts were worked, called for them to receive in preferred stock 80 percent of the net worth, and obviously as Arrow Carrier Corporation would be reducing its net worth by \$12,000 by paying out that sum to Mr. Hamilton, the amount of preferred stock that the Transport Company was to get in exchange for its Arrow stock—preferred stock—was reduced by 80 percent of \$12,000, or \$9,600 par value of preferred stock of Associated Transport, Inc.

Q. Will you state the reason why the Associated Transport requested, or, as you put it, demanded that the Transport Company make some provision with respect to obtaining a release of Mr. Hamilton's contract?

A. My understanding is that Mr. Hamilton's health was not such as permitted him to be active in the trucking business any more and that the Associated Transport Company did not want to be burdened with any contracts with anybody except people who were going to be active in the management of the business.

Q. Well, then, you finally—you, speaking of you as the Transport Company—finally complied, according to the general formula, with the Associated Transport Company, and you complied with their request with respect to Mr. Hamilton. And was there another request that they made with respect to this 50 shares of preferred stock that you also complied with? In other words,

putting it another way, I will ask you the reason why your company made this additional purchase, as you put it, 470 of either 25 or 50 shares of preferred stock?

A. Well, you see, that goes back to the execution of the original contract with the Arrow Carrier Corporation. At that time there was something in the neighborhood of \$30,000 worth of preferred stock scattered in the hands of very small holders. Now, that stock was callable at 105, which meant that if it were redeemed, it would cost \$1,500 to redeem it, and after looking the situation over we decided that it would cost us more than \$1,500, and the expenses, and delay, and so forth, in running around and endeavoring to contact each one of those individual stockholders and purchase the stock; therefore we left the Arrow Carrier Corporation contract with a small amount—I think it was 31,000, something in that neighborhood—thousand dollars worth of preferred stock outstanding, with the expectation that it would be redeemed after the merger was completed and the rest of the stock was taken over, so that there would be no outstanding minority interest of Arrow Carrier Company after the merger had been completed; and, therefore, when the question came up of purchasing this block of stock it was obviously a thing that would have to be done anyhow, and so Transport Company just said, "Well, all right, we will buy."

Q. Well, they made the demand that you purchase 80 percent of the preferred stock and get approximately that amount in order to be in a position—

471 A. Yes; it was done that way. We found we could buy that block of stock, and we knew we would have to buy it anyhow, so we acceded to that demand.

Q. Now, then, Mr. Arnold, after the entering into of the contract between the Transport Company and the Associated Transport Company you were elected a director of the Associated Transport Company?

A. Yes.

Q. And you presently are such a director?

A. Yes, sir.

Q. Is it contemplated that when, as, and if this merger is approved, that you will continue to be such a director?

A. No; it is not so contemplated. In fact, it would be very unusual for me, or a person in my position, to continue as a member of the board.

Q. And do you know who it is that is planned would probably be put on the board?

A. Probably some operating man.

Q. From the Arrow Company?

A. Probably.

Q. Either Mr. Ackerman or Mr. Whitehead?

A. Either Mr. Ackerman or Mr. Whitehead or someone. As far as I know, it has not been definitely settled at all, but that is the ultimate expectation.

Q. In other words, your position on the board is simply  
472 to give representation to the Transport Company pending the time when the Associated Transport Company could go into actual operations?

A. Yes, sir.

Q. I want to ask you this question, Mr. Arnold: Is there any agreement, direct or indirect, with your firm of Kuhn & Loeb whereby it is agreed or understood that if the Commission approves this issuance of \$1,500,000 worth of preferred stock that your firm is to have the underwriting—or the attempted disposition of that stock to the public?

A. None whatever.

Q. Has there been any bargaining or dealings with respect to attempting to reach such an agreement?

A. The question of the underwriting of the securities of Associated Transport Company has never been taken up with Kuhn, Loeb & Company in any manner whatsoever.

Q. Were these dealings between the Associated Transport and the Transport Company with respect to the acquisition—with respect to the making of this contract and the acquisition of certain accounting material, transcripts of testimony, engineering reports, and the like—were both of those dealings conducted at what might be described at arm's length?

A. That would be a mild way to express it.

Q. What can you say with respect to the intention or plans of the Transport Company to take up and fulfill their con-  
473 tracts with the stockholders of Arrow Carrier Corporation when, as, and if this proposed unification or merger or acquisition of stock is approved by the Commission?

A. Unquestionably if the merger is approved it is the intention of the Transport Company to complete the Arrow transaction.

Q. Have the Transport Company made arrangements with Kuhn, Loeb & Company to supply themselves with funds for that purpose?

A. Probably so they have. It is, you might say, somewhat obvious. Here is a corporation which a hundred percent of the stock is owned by Kuhn, Loeb & Company. It is scarcely necessary for them to have drawn up any agreements to the effect. When the time comes Kuhn, Loeb & Company will loan them the relatively small amount of money involved in the merger.

Q. I did not mean that there was a formal agreement.

A. That is the understanding.

Mr. SULLIVAN. I think that is all the questions I have at this time.

Exam. BAKER. Cross-examination.

Cross-examination by Mr. WIPRUD:

Q. Mr. Arnold, has the Transport Company any assets aside from its interest in Arrow Carrier Corporation?

A. It has the—or had—yes; it has now, or will have, the shares of Associated Transport, Inc., which it will receive  
474 for the engineer's reports and other data that they have sold to Associated Transport, and there is a small cash balance, a few hundred dollars in the bank. Other than that, the only assets they have are the preferred stock of Arrow Carrier Corporation and the common stock of Arrow Carrier Corporation subject to an agreement to complete the purchase price.

Q. What was the consideration involved in the acquisition of Arrow Carrier Corporation by Transport Company?

A. \$1,007,000 if I remember correctly. I won't want to be held too accurately as to whether that was seven or six, or something of that kind.

Q. In round figures \$1,007,000?

A. \$1,007,000—eleven hundred and seven thousand dollars—one million one hundred and seven.

Q. And of that amount the Transport Company has paid \$107,000, in round figures, aside from this additional stock which you spoke of?

A. No; they have paid \$207,000.

Q. \$207,000.

A. They bought \$107,000 of the preferred stock, which constitutes the same thing, and they paid an actual hundred thousand dollars in cash.

Q. So the balance due in cash on the contract for the acquisition of Arrow Carrier Corporation is, in round figures, \$900,000?

475 A. In round figures, \$900,000.

Q. Now, that contract, which in effect constitutes an option to purchase, I imagine, has been extended, according to your testimony, to December 18, 1941?

A. Yes, sir.

Q. And if this unification is not approved, Kuhn, Loeb & Company, as sole stockholders of Transport Company, will have to pay the balance of \$900,000 or lose its investment of \$207,000?

A. Yes, sir.

Q. Mr. Arnold, assuming that this pending application is approved under the existing contract between the stockholders

of Arrow, of which Transport is one, and Associated Transport, what would be the amount of stock, preferred and common, which Transport would receive in that exchange?

A. I am not prepared to furnish that information with any accuracy, but I can probably, by consulting the contract, find the information.

Mr. SULLIVAN. Excuse me, sir. It would be, oh, within 10 percent. It is shown in your copy of the application, and the final figures will be in the record through Mr. Reicher, who will go on Monday.

Mr. WIPRUD: I see.

Exam. BAKER: You withdrew that question?

Mr. WIPRUD: I do, Mr. Examiner, in view of counsel's  
476 statement.

By Mr. WIPRUD:

Q. Mr. Arnold, Kuhn, Loeb & Company is engaged in the distribution of transportation securities, is it not?

A. Yes, sir.

Q. It has in the past and still is engaged in that activity?

A. Yes, sir.

Q. Are there representatives of Kuhn, Loeb & Company on any other transportation company?

A. On their board?

Q. Yes.

Mr. SULLIVAN. Excuse me. I would like to know what counsel means by "other transportation company." The Associated Transport is not a transportation company nor is the Transport Company at the present time.

Exam. BAKER. Would you clarify your question.

By Mr. WIPRUD:

Q. Well, assuming that Associated Transport is a transport company—and I understand the testimony here is it would be in case this application is approved, and the unification completed—my question is whether or not Kuhn, Loeb & Company is represented on the board of directors of any other transportation company.

A. I can't claim a hundred percent accuracy for my reply to that question, but I will do the best I can. I think Kuhn,

477 Loeb & Company have a representative on the board of the Eastern Air Lines. I think Kuhn, Loeb & Company

have a representative on the board of directors of the Kansas City Southern Railway. I think they have a representative on

the board of the Missouri-Kansas-Texas, but I am not so confident of that. They also have a representative on the board of one of the subsidiaries of the Union Pacific System. I think it is the old Los Angeles and Salt Lake, which is a subsidiary of the Union Pacific, and I think there is a representative of Kuhn, Loeb & Company on that board. Now, that completes the list of transportation companies that I can recall on which Kuhn, Loeb & Company have a board member.

Q. Does your statement include holding companies also in the transportation field?

A. Yes.

Q. Has Kuhn, Loeb & Company any interest at all, by way financing or otherwise, in any carrier, rail, water, or motor, in the territory involved in this application?

A. Kuhn, Loeb & Company for years have been the bankers for the Pennsylvania Railroad and the Baltimore & Ohio Railroad, and these I think are the only ones that I know of that are really in the territory involved in this merger. There may be others, but I do not recall any.

Q. Mr. Arnold, in the, shall we call it, original application of Transport there was involved a company known as the Metropolitan Distributors, Inc., which, I believe the testimony is, has 50 percent owned by the Metropolitan Securities Holding Corporation. Has Kuhn, Loeb & Company any relationship, direct or indirect, to either of those companies?

A. None whatever.

Q. Or to any of the stockholders connected with those companies?

A. So far as I know, none.

Q. Is the same true of the Yellow Company, I believe it is?

A. Yellow?

Mr. SULLIVAN. Yellow Products, is that it?

Mr. WIPRUD. Yes.

A. No connection whatsoever, as far as I know. Now, I want to say here when I answer the questions positively that way, instead of negatively, that they are always qualified to the extent of my knowledge. I could always say I don't know, because it is quite possible something might come up, but I am trying to give you the benefit of my knowledge. So when I state that they have not, it means to the best of my knowledge and belief they have not. Should it turn up that I am accidentally wrong, why, I don't want to be accused of perjury.

Mr. WIPRUD. I appreciate that.

Mr. SULLIVAN. He is the right fellow to talk to about that.

479

By Mr. WIPRUD:

Q. Does your statement also include the Terminal System, the taxicab company with which Mr. Seymour is connected?

A. Yes.

Q. Has your company had any relationship, financial or otherwise, with the Phoenix Securities Corporation?

A. I don't think Kuhn, Loeb, & Company has ever had any direct relationship with the Phoenix Securities Corporation. We have occasionally discussed various things with them, or representatives of them, but to the best of my knowledge and belief, we have never had any financial interest, not even temporarily, in the Phoenix Securities Company.

Q. And no discussion in connection with this particular transaction?

A. I would not be too sure about that. At one time it seems to me Phoenix Securities Corporation was the owner of a fairly decent block of stock of one of the carrier companies in the transport merger, and it is quite possible that we may have discussed the purchase of that stock with them, although I do not recall it.

Mr. WIPRUD. That is all.

Mr. SULLIVAN. Excuse me. May I ask one question?

By your last answer you refer to the negotiations that were being conducted with respect to the old—

480 The WITNESS. Original old contracts, which were signed in the early spring of 1940.

Exam. BAKER. Any further cross-examination?

By Mr. JOSELOFF:

Q. You have not had any conversations with Phoenix Securities, Mr. Arnold, or any member of Kuhn, Loeb, so far as you know, in regard to the present transaction, have you?

A. No, none whatever.

Mr. SULLIVAN. Excuse me. Would you repeat the question and answer to me.

(Last question and answer read.)

Mr. SULLIVAN. Oh, you had conversations with Kuhn, Loeb.

The WITNESS. I answered that question, as I can see now, misconstruing Mr. Joseloff's meaning. Now that the question is reread, I can see that I made a patently wrong statement. To clear the record, if you will ask the question over again I will try to answer it.

Mr. JOSELOFF. All right. I would like to withdraw the previous question, since its meaning is a little unclear on the record, and reframe the question.

By Mr. JOSELOFF:

Q. Have you or members of Kuhn, Loeb, to your knowledge, had any conversation with members of the Phoenix Securities Corporation with relation to the present transaction as set forth in the present application?

A. None whatever.

Exam. BAKER. Will applicant agree to furnish for this  
481 record copies of the lease agreement in effect between the Transport Company and Arrow Carrier Corporation?

Mr. Sullivan. Well, before the close of the case, or as soon as it is possible to have them made, sometime within the next 5 or 6 days.

Exam. BAKER. If it is possible before the close of the case it would be preferable. If not, I will fix a date at the close of the hearing for any data that has not been received.

Mr. SULLIVAN. I am informed, Mr. Examiner, that a copy is already in the possession of the Interstate Commerce Commission, but we can furnish another if it is required.

Exam. BAKER. I realize it is, but it is in another docket, and I think it would be preferable to furnish it for this record. Not only copy of the lease agreement, but also copy of the agreement between the Transport Company and the stockholders of Arrow Carrier Corporation, as well as amendments to that agreement.

Mr. SULLIVAN. And does that—well, of course, it would entail and include the original contracts in conjunction with the old transport deal, which contracts were made last May. Of course, a copy of that is presently in your possession, a printed copy, as part of MC-F 1223, but I think we can find another. It is somewhat—

482 Exam. BAKER. I think it would be better to keep them together.

Mr. SULLIVAN. All right.

By Exam. BAKER:

Q. Mr. Arnold, who has the legal title to the common stock of Arrow Carrier Corporation at this time?

A. Mr. John Ackerman.

Q. Reference has been made to a transaction whereby the Transport Company sold to Associated Transport, Inc., certain data collected in connection with the previous proceedings before this Commission, and 9,000 shares of the common stock of Associated Transport, Inc. When was an agreement respecting those 9,000 shares made?

A. I do not remember exactly, but it was almost a matter of hours before the contracts were finally signed.

Q. Were the two contracts, that is, the one respecting the 9,000 shares of stock and the one for the exchange of stock with Associated Transport, Inc., entered into concurrently?

A. Unquestionably they were dependent one upon the other. In other words, they would not have entered into the major contract unless they entered into the minor contract, that being part of the same deal.

Q. You referred to an effort made to commute the contract, the employment agreement, with John Hamilton. Were any efforts made with respect to the employment agreements with the other three gentlemen whom you mentioned, Messrs. Ackerman, Buckley, and Whitehead?

483 A. Not to my knowledge.

Q. As I understand, those three contracts were to become effective when the Transport Company took title to the stock of the Arrow Carrier Corporation. Is that correct?

A. Yes, sir.

Q. So the contracts are not effective as yet?

A. Not as yet.

Exam. BAKER. I might direct this question to counsel. Mr. Arnold referred to the fact that the payment to Mr. Hamilton of \$12,000 would result in a reduction in the amount of preferred stock of Associated Transport Company which the Transport Company would receive. Isn't it true that under the contract the amount of preferred stock deliverable is based on net worth as of April 30, 1941?

Mr. SULLIVAN. I think a provision was made for that.

The WITNESS. Yes. Mr. Ackerman answered that. A provision was made specifically that, whereas this is the balance sheet as of March—April 30, 1941, that the settlement shall be made upon this balance sheet after deducting \$12,000 to amortize or to commute the Hamilton contract.

Mr. SULLIVAN. The balance sheet as it will be submitted here will already have the reduction in, and even if they did not go through with Hamilton it would not make any difference.

Exam. BAKER. Of course, the payment of \$12,000 has not  
484 been made, so the balance sheet will not reflect that.

Mr. SULLIVAN. Well, for the purpose of working out the stock it is going to be deducted to that extent.

Exam. BAKER. Well, do I understand from Mr. Arnold that an agreement was reached specifically on that subject that \$12,000 would be deducted?

The WITNESS. Yes.

Exam. BAKER. Was a written agreement entered into respecting that?

The WITNESS. I do not recall that it was a written agreement beyond the fact that in the schedule it was specified as part of the balance sheet. I do not remember whether there was a clause in the contract covering it or not.

Mr. SULLIVAN. There might be a clause. Mr. Cochran is now looking for it. There might be a letter that was written afterwards, or an understanding. We will have to check that.

Exam. BAKER. If there is a written agreement in the form of a letter or otherwise on the subject, will copies of that be furnished?

Mr. SULLIVAN. It will be furnished if there is such a letter. I think we took Mr. Adkins' word as a gentleman's agreement. He is attorney for Kuhn Loeb.

The WITNESS. Whatever recollection I have is on the balance sheet we discussed with the accountant the advisability of putting a footnote on the balance sheet to the effect that  
485 either this balance sheet did reflect an additional \$12,000 deduction or there would be a separate deduction from it. I do not know which way they finally decided to do it.

Mr. SULLIVAN. Just one.

By Mr. SULLIVAN:

Q. Was the reason, Mr. Arnold, why you would not close the deal with respect to the accounting data until you closed the deal with respect to Arrow Corporation—was the reason for that, as expressed by yourselves, that you felt that this accounting data was valuable to you people?

Mr. WIPRUD. If the Examiner please, I object to testifying by counsel.

Exam. BAKER. Would the Reporter read that question, or statement, whatever it was.

(Question read.)

Exam. BAKER. I think the question is objectionable.

Mr. SULLIVAN. All right.

Exam. BAKER. Witness excused.

That is all, Mr. Arnold.

The WITNESS. Thank you.

(Witness excused.)

Exam. BAKER. We will take a recess for 15 minutes.

(Whereupon a recess was taken.)

Exam. BAKER. Are you ready, Mr. Sullivan?

Mr. SULLIVAN. Yes.

486 Exam. BAKER. Let us resume, gentlemen.

JOHN E. ACKERMAN, being first duly sworn, testified as follows:

The WITNESS, John E. Ackerman.

Direct examination by Mr. SULLIVAN:

Q. Will you state your residence, Mr. Ackerman?

A. 208 Passaic Avenue, Passaic, New Jersey.

Q. And you are connected with what company?

A. Arrow Carrier Corporation.

Q. In what capacity?

A. President and treasurer.

Q. And are you a stockholder of that company—or let us put it this way:

Prior to last May you owned a certain amount of stock in that company?

A. Yes, sir.

Q. And how much stock did you own? What percentage? Do you happen to know? Roughly.

A. I have the details here, if you want me—as of last—

Q. As of the time of your entering into the contract referred to by the last witness, Mr. Arnold.

A. 400 shares of preferred and 398 shares of common.

Q. Now, will you tell us the total amount of preferred and common that were outstanding as of that date?

487 A. 1976½ shares of common and 1380 shares of preferred.

Q. Have there been any changes in the charter of the Arrow Carrier Corporation since the hearing of last summer in the transport deal, Docket Nos. MC-F 1223 and certain other numbers? Have there been any changes since then?

A. No, sir.

Q. You have been connected with the Arrow Carrier Corporation for a great many years?

A. Since 1920.

Q. And you are one of the founders of that company?

A. Yes, sir.

Q. Prior to that time what was your business, Mr. Ackerman?

A. I was connected in minor capacities with J. P. Morgan & Company, Hallgarten & Company, bankers, and James B. Duke, tobacco king.

Q. So you went from the banking business into the trucking business—

A. Yes.

Q. And ended up by putting the truck business back in the banking business.

A. Uh-huh.

Q. Well, now, will you tell us the history of the Arrow Carrier Corporation, how it started, its growth and development, in your own words?

A. The Arrow Carrier Corporation was incorporated in 488 March, 1920. My brother-in-law, Mr. James Buckley, and myself were the original owners of the company. Later on we took in Mr. Hamilton and Mr. Whitehead as partners.

We started operating—

Q. When you say "as partners" you mean they became stockholders in the company?

A. Stockholders.

We started operations between the metropolitan area and Allentown, Pennsylvania, and the vicinity of Allentown, hauling mostly silk.

The business grew rapidly, and in 1923 we expanded to the Scranton-Wilkes-Barre area.

In 1925 we went a little further on through Hazelton, Sunbury, Shamokin, and later on further extended our operations into the Williamsport territory.

In 1938 by acquisition of Raleigh Motor Express we acquired additional rights and business in Harrisburg area, Trenton area, and Binghamton area, together with other valuable intrastate rights within the State of Pennsylvania.

Q. Mr. Ackerman, was the growth of this company accomplished out of the earnings of the company other than such original capital as you and your brother-in-law, Mr. Buckley, were able to put in, and your other two associates perhaps advanced when they became associated with you?

A. There were some minor additions of capital on the 489 part of the original stockholders after the first few years, and in 1937 we, the same four gentlemen that I mentioned before, added \$107,000 in capital.

Q. When you say "the same four gentlemen" you mean yourself and the other three that you mentioned?

A. Yes.

Q. Well, then, are your operations at the present time substantially shown in the map, Exhibit C-5, attached to the application, and shown in the map on the easel over there, which is an enlargement in colors of the same map?

A. Yes; they are.

Q. What is the nature of your business now? What sort of commodities do you handle?

A. We have handled general commodities since 1925.

Q. Prior to that, as you have testified, it was principally interested in silk?

A. In silk.

Q. And has the business grown during this period in volume?

A. Yes; it has grown substantially.

Q. Can you tell us approximately what the volume is either for the 12 months of last year or for the first 6 months of 1941, whichever you have?

A. We had a million and a half gross in 1940.

Exam. BAKER. Is that pounds?

The WITNESS. No; dollars.

490 And we will reach about \$1,900,000 or \$2,000,000 this year.

By Mr. SULLIVAN:

Q. Has the company been profitably in operation substantially from its inception?

A. Yes, sir.

Q. Do you happen to be able to tell us what your earnings for the first six months of this year were?

A. Yes, sir; \$97,000 net before taxes.

Q. Have you yet received your certificate from the Interstate Commerce Commission with respect to your interstate operating rights?

A. Yes, sir; about two years ago.

Q. And you spoke of some intrastate rights that you have. What state are those in?

A. Pennsylvania.

Q. And are they extensive?

A. Very extensive.

Q. Are intrastate rights in Pennsylvania—what have you to say as to the value of intrastate rights in Pennsylvania?

A. Insofar as our own intrastate rights are concerned they are exceedingly valuable because they duplicate in Pennsylvania the same routes that we have interstate rights from outside the state; therefore it makes a very practical and profitable operation for us.

Q. What can you say as to the ease or difficulty of obtaining intrastate rights in the State of Pennsylvania?

A. It is very difficult to get additional rights.

Q. Can you tell us—excuse me.

A. We were about four and a half to five years getting the last amendment to our certificate, which gave us rights to interchange between practically all points on our interstate rights.

Q. Are these rights capitalized on your balance sheet?

A. At less than cost of acquisition; that is, legal fees, et cetera.

Q. That is, you set nothing up for that as value other than the money you actually paid for legal fees?

A. That is right; and that has been amortized.

Q. And you have amortized that as you go along.

A. That is right.

Q. About what percentage of your business is intrastate?

A. I would say about twelve and a half percent.

Q. And the balance would be interstate business?

A. That is correct.

Q. What could you say with respect to your operation—in what territory most of your business arises or to what territory most of it moves?

A. Well, the greatest density of traffic naturally is in the metropolitan area. Our second heavy industrial section is the territory in and around Allentown, Pennsylvania.

492     **Exam. BAKER.** You mean the metropolitan area of New York City?

The WITNESS. New York.

By Mr. SULLIVAN:

Q. Now, you have terminals that you use in conjunction with your operations?

A. Yes. We have about 19 terminals.

Q. I wonder if you would read into the record the locations of those terminals.

A. Paterson, New Jersey; New York; Newark, New Jersey; Binghamton, New York; Trenton, New Jersey; Stroudsburg, Scranton, Forty Fort—

Q. Excuse me. Before you move on, would you tell us whereabouts in Pennsylvania Forty Fort is?

A. It is sort of a suburb of Wilkes-Barre.

Q. It is what would otherwise be a separate municipality, or what might be described as your Wilkes-Barre terminal?

A. Wilkes-Barre.

Q. All right. Go ahead.

A. Forty Fort, Hazleton, Sunbury, Shamokin, Williamsport, Schuylkill Haven, Reading, Lebanon, Allentown, Danville, all of Pennsylvania, and Phillipsburg, New Jersey.

Q. Simply to make it a part of the record, your company has a net worth of about how much? I do not care exactly.

A. Book value or trade?

Q. Yes—no; net worth without appraisal. What do you  
493     carry it on your books at?

A. \$908,009.70.

Q. Thank you. Do you own certain of your terminals?

A. Yes.

Q. And which ones do you own?

A. We own the Paterson terminal, the Allentown terminal, and the Danville terminal.

Q. And are they free or substantially free of encumbrances?

A. All free.

Q. Do you interchange with other motor carriers?

A. Yes.

Q. And about how many other motor carriers do you interchange with?

A. I would say about 10 or 12.

Q. And has that number remained reasonably constant over the past few years?

A. Yes.

Q. Of the 12 or 10 motor carriers with whom you have interchange arrangements, how many are members of this proposed merger?

A. By name?

Q. Yes; and give the name.

A. Barnwell, Horton—that is all.

Q. If this merger were approved, would you expect to  
494 continue interchanging with those carriers who are not a part of it?

A. Yes.

Q. Do you direct the shipper's routing?

A. Yes, sir.

Q. Would you expect to continue to do so?

A. Yes, sir.

Q. What can you say as to whether or not to attempt not to do so would be good or bad business policy in the trucking business?

A. Well, I think it would be very bad policy.

Q. Well, put it this way: If a shipper gives you a routing, you can't do anything else except comply.

A. That is right. If you do not comply and something happens, you are responsible.

Q. And what happens when he finds out?

A. You may possibly lose his business.

Q. What particular phases of your business are you mostly concerned with, come more directly to your attention?

A. The executive end and operating.

Q. Would you describe for us a little more particularly the duties you perform with respect to the Arrow Carrier Company's business?

A. That is a pretty big order.

Q. Well, I appreciate that, but you can scale it down.

495 A. Well, I have several subordinates who report to me with regard to all traffic matters; operating, and personnel, and we discuss those matters thoroughly, and decide on matters of policy with them. I handle all the finances and the larger truck purchases—larger purchases such as trucks and

tires, gasoline contracts, and a million and one odds and ends that develop in the business from day to day.

Exam. BAKER. Will you raise your voice a little, please.

The WITNESS. All right, sir.

By Mr. SULLIVAN:

Q. Do you concern yourself directly with the operations of the company? By that I mean the physical operations.

A. Not daily.

Q. No, but I mean from time to time.

A. Yes, regularly, every couple of days I get these reports from my subordinates and we discuss them.

Q. And you have continued to do that for a great many years?

A. Yes, sir.

Q. You have some contact with the shipping public?

A. Very little with the customers.

Q. Well, are you acquainted with many of your customers?

A. I am acquainted with quite a few of the larger ones.

Q. And to that extent you have contacts with, you may say, your larger customers?

A. That is right.

Q. Do you entertain them from time to time—some of them?

496 A. Yes.

Q. Do you also generally supervise the sales and tariff departments?

A. No. Mr. Whitehead supervises the sales, and Mr. O'Connor, our traffic manager, takes care of the other matter.

Q. But they in turn take those matters up with you, and policies with respect thereto, and you act on them?

A. Yes, sir.

Q. Now, you spoke a moment ago of your brother-in-law, Mr. Buckley, who was one of the founders of the company in 1920. What part of the business does Mr. Buckley attend to?

A. Mr. Buckley is in charge of the operations of the Allentown, Pennsylvania, terminal, both day and night operations. That is a very large terminal, second to Paterson.

Q. And in conjunction with his Allentown operations do his duties or authorities extend to the territory in that vicinity?

A. No, he has nothing to do with that, except operations in and out of Allentown.

Q. He resides in Allentown?

A. That is right.

Q. We have referred here to a Mr. Hamilton. He was with the company a great many years in an active capacity?

A. Yes, sir.

Q. And recently has he been unable to continue in such active capacity?

497 A. That is right.

Q. At least for some considerable periods of time during the last year he has been confined to his home or hospital or the like?

A. That is right.

Q. You spoke of the purchases of trucks and so forth that you concern yourself with, as well as other phases of the operation. Are there some special policies with respect to the purchase, building, maintenance, operation of equipment Arrow Carrier has that may be of interest to us? Will you tell us about them?

A. Well, since 1930 we have confined ourselves exclusively in building of bodies to aluminum bodies. Since about 1935 or '36 all our trailers have been chassisless trailers. We wanted to get the weight down so we could get greater carrying capacity. With few exceptions, all of our cabs on this equipment are bullet-proof. Bullet-proof steel is used, and also bullet-proof glass. The commodities we handle have been very valuable, and we want to keep away from the holdup hazard.

Q. Does the result of using this bullet-proof steel and bullet-proof glass have some effect on safety with respect to the operators of these vehicles?

A. Yes. In the event there was a crash with one of the trucks, or overturning, why, many times that substantially built cab has been responsible for either saving them from getting killed or minimizing injuries.

498 Q. You are speaking now as a result of your experience, are you?

A. Yes.

Q. Since you have been building or causing to have built for you these frameless aluminum bodies, what can you tell us as to the reduction in weight that you have been able to accomplish in these bodies?

A. We have allowed the inside dimensions of the body to remain the same and had reduced the weight from about 8,500 pounds on these semi-trailers to 5,700 pounds. That has been a gradual transition.

Q. And as you acquired new equipment you have been able to do that?

A. Yes.

Q. And was that the result of some special cooperation between yourself and certain body builders and suppliers and the like?

A. That is right.

Q. You have some special policy with respect to maintenance of your equipment, saving parts, rebuilding, and the like?

A. Well, it is not exactly a special policy; it is what we think is the most economical thing to do. The trade-in value of old equipment is very small, and when one of these old vehicles have a smash, instead of repairing them we take them apart and salvage the useful articles. In that way we get much more value out of them than trade-in.

499 Q. I observe in looking at certain exhibits connected with the Arrow Carrier Corporation that the size of the tractor, for example, seems somewhat in excess to that used by many other lines.

MR. WIPKED. Again we seem to have testimony by counsel.

MR. SULLIVAN. I was going to ask a question.

MR. WIPKED. Oh, I beg your pardon.

MR. SULLIVAN. I was going to ask him to give any explanation on the policy they follow with respect to that equipment.

EXAM. BAKER. Go ahead and complete the question.

By MR. SULLIVAN:

Q. I observe in looking at certain exhibits with respect to the Arrow Company that the size and weight of the tractors seem to indicate to have rather larger tractors. Is that a result of a certain line of thought on the part of the management of the Arrow Company?

A. Yes. We have quite a mountainous area to travel, and it makes the greatest safety on the road in that the power units of proper size can negotiate the hills better than underpowered vehicles. Also it keeps the operation going at a better rate of speed. In other words, some of our runs, the men would hardly be able to complete their run in the required time unless they had a properly powered vehicle, as compared with some of these lighter units that are used.

Q. Well, roughly, what percentage of your equipment is of that type that you have just described?

500 A. All of our equipment.

Q. What can you say as to whether or not the use of such equipment is the general policy of the other carriers in that territory?

A. Well, there seems to be a variety of opinion. I believe most of them feel the same way today.

Q. Coming over to your way of thinking.

Well, what can you say with respect to the value or nonvalue of your studies in conjunction with such a matter to other members of this proposed group?

A. Well, I think the other members of the group have had their own experiences along that line and they probably would know

from their experiences just as well as I do what is fitted for their runs.

Q. Have you gathered together or caused to be gathered together under your supervision the names of certain of the carriers operating in your territory and some figures with respect to their revenue during the past year?

A. Yes.

Q. And have you those figures with you?

A. Yes, sir.

Q. I wonder if you would read them into the record, please.

A. These are directly competitive—is that what you mean?

Q. Yes; those who are operating in your territory there.

A. We have—

501 Mr. WIPRUD. Just a moment, Mr. Examiner. May I inquire what the witness is reading from?

Exam. BAKER. You may answer that.

The WITNESS. This happens to be a copy of our exhibit in the last hearing.

Mr. WIPRUD. Well, that is not in evidence in this hearing.

The WITNESS. We have not offered it in evidence.

Mr. WIPRUD. Before the testimony goes in as evidence, I presume we should know how these figures were compiled.

Exam. BAKER. He may, of course, refresh his recollection. You should state that the testimony presumable will be of your own personal knowledge. If you do not yourself know that these competitors operate, of course, your testimony should not be to that effect.

The WITNESS. This is of my own personal knowledge.

Exam. BAKER. You may proceed.

Mr. WIPRUD. May I make a further inquiry, Mr. Examiner? Are these figures of other companies than his own?

The WITNESS. Is the question directed to me, Mr. Examiner?

Exam. BAKER. You may answer.

The WITNESS. These are other companies directly competitive to us in our territory.

Mr. WIPRUD. Well, then, I want to make an objection to giving any figures on competitive companies unless he discloses the source of those figures.

502 Mr. SULLIVAN. I thought he did.

The WITNESS. These figures were taken from the Interstate Commerce Commission's records, the semiannual and annual reports of these companies to the Commission.

Exam. BAKER. Do you still have an objection, Mr. Wiprud?

Mr. WIPRUD. No; I withdraw the objection, if they are taken from the official records.

**Exam. BAKER.** The annual reports with respect to companies, as I understood, in possession of the Commission. Is that correct?

**The Witness.** That is correct.

**Exam. BAKER.** You may proceed.

**The Witness.** Bingham Motor Express, Reading, Pa. Revenue is unknown. I believe they are just under the size of a Class 1 carrier. Daley's Blue Line Transfer, Wilkes-Barre, Pa. Do you wish the 1940?

**By Mr. SULLIVAN:**

**Q.** Just give us the 1940.

**A.** \$145,169. Eastern Carrier Corporation, Dunmore, Pa., \$235,813. Friedman's Express, Inc., Wilkes-Barre, Pa., \$235,813. Garford Trucking Company, South River, N. J., \$360,610. H. L. Goble & Company, Inc., Great Meadows, N. J., \$164,113. Horlacher Delivery Service, Philadelphia, Pa., \$1,060,398. Interstate Magazine Hauling Corporation, New York, N. Y., 503 \$185,883. Jones Motor Company, Spring City, Pa., \$182,580. Wm. McCullough Transportation Co., Inc., East Rutherford, N. J. That is not available. They have not filed a report. Their 1939 gross was \$365,589. Modern Transfer Company, Allentown, Pa., \$277,411. Motor Freight Express, Inc., York, Pa., \$798,452. New York & Pennsylvania Motor Express, Reading, Pennsylvania, \$166,291. Preston Trucking Company, Baltimore, Md., \$442,328. Richards Motor Freight Lines, Scranton, Pa., \$1,092,800. Rodgers Motor Lines, Inc., Scranton, Pa., \$161,083. Speedway Carriers, Pottsville, Pa., information not available; apparently just under a Class 1 carrier. I have some others here that we have got the information on.

**Q.** I think you showed me some others at the bottom of your list that you had the information on. Would you give us those?

**A.** That is right. Branch Motor Express, Allentown, \$781,592. York Motor Express, York, Pa., \$1,301,361.

**Q.** Did you have some others which you did not assemble the figures on?

**A.** Yes, sir. I have Crown Motor Express, of Paterson, 504 N. J.; Condin's Express, of Paterson, N. J.; Hall Motor Transit Company, Sunbury, Pa.; and the New Pennsylvania Motor Express, of Lebanon, Pa.; Boushell Carrier, of Stroudsburg; and Fowler & Williams, of Scranton; and the Perkiomen Transfer, of Perkasio.

**Q.** What can you say as to whether those, to your knowledge, are Class 1 carriers—that group?

**A.** I believe they all are, except Boushell Carrier.

**Q.** What can you say as to whether the carriers in the list you read are common carriers of general commodities or not?

A. With the exception of Crown Motor Express, who, I believe, has a restricted certificate, they are all general commodities—carriers of general commodities.

Q. Is the Arrow Carrier Corporation in direct competition with any of the other carriers in this proposed merger; and, if so, between what points?

A. I do not believe we are in direct competition with any of them at any points.

Q. Put it another way: If you are in competition, you have not heard about it, is that it?

A. That's it.

Q. Have you heard the testimony of some of the witnesses, such as Mr. Arbour and Mr. McCanthy, here today?

A. (Witness nodded.)

Q. And you heard their testimony with respect to the advantages to the shipping public, general public, that might be effectuated by this proposed unification?

505

A. (Witness nodded.)

Exam. BAKER. Speak up so the Reporter can hear you.

The WITNESS. Yes, sir.

By Mr. SULLIVAN:

Q. Well, do you agree or disagree with their testimony?

A. I agree with the testimony that I heard.

Q. And have you anything to add to it?

A. No. I could only perhaps put it in a different way, different words, that is all.

Q. Suppose you give us some of the advantages you feel would accrue to the shipping public or the general public as a result of the things that are proposed here?

A. Well, I believe that it would be—the most advantageous thing about the merger from the shipper standpoint would be the fact that he would have one carrier serving him to a very—in a very wide distribution of his products. That would eliminate most of the congestion in some cases all of it, at his shipping and receiving rooms. It would simplify his accounting to the extent of paying his bills and checking his bills—have one central operating trucking company. It will save a great deal of time on the part of his traffic manager in interviewing all the solicitors of the various companies. In the matter of claims for damages, it

506 would simplify matters for the shipper. And there would also be an avoidance of overshorts and damages through central control. I think those are the main advantages to the shipper.

Q. Incidentally, this business of overshoot and damage claims and claims of other nature are rather extensive in the motor business, are they not?

A. Yes; it happens frequently. It is a daily occurrence.

Q. That requires maintenance of a staff for the purpose of handling claims?

A. That is right.

Q. Now, move along from there. Do you have a wire service in any way throughout your system between your terminals, or do you rely on the regular telephone service?

A. We rely on the regular telephone service, except between Paterson and New York we have a direct line.

Q. It would be more convenient to have possibly more extensive direct wire service, would it not?

A. We have weighed it, but our operation is fanned out so largely in the matter of territory that it is more economical for us this way than it would be to install the wire system.

Q. Well, but if there were other companies grouped along with yours under such merger as is proposed here, the extension of wire service throughout your territory would then be feasible?

A. If there were a large increase in volume in certain points it would be feasible.

507 Q. I had in mind the fact that Horton and Barnwell have terminals at certain points throughout your territory.

A. That is right.

Q. And someone else. Moran have a terminal at Binghamton.

A. At Binghamton.

Q. In hooking up those terminals by a system of wires it would be possible to cut your terminals in on that system, certain of your terminals?

A. Yes.

Q. So to that extent at least you would enjoy the benefit of direct wire service that you presently do not have.

A. Where it would be feasible to put it in it would be very helpful.

Q. Well, from your viewpoint alone or from the viewpoint of the public, or both?

A. Well, principally from our standpoint in checking freight, these overshoots and damages, and which in turn, of course, would be to the advantage of the shipper, finding out promptly what happened to his freight.

Q. Have you anything else you would like to tell us that you think we should hear with respect to the matters of interest here from the point of view of Arrow Carrier, realizing you are not one of the sellers here or the direct joiners of the merger, because

you have no stock involved? Have you anything else to suggest that I have forgotten to ask you?

508 A: No.

Mr. SULLIVAN. I think that is all the questions I have.

Exam. BAKER. Cross-examination.

Cross-examination by Mr. WIERUD:

Q. Mr. Ackerman, the list of independent carriers that you read a moment ago into the record, does that represent substantially all of the competition that will be left in this territory in which you now operate?

A. All of the larger ones; yes.

Q. And of that number how many are Class 1 carriers?

A. Well, I specified when I testified those that were not Class 1. I believe there were three or four.

Q. My computation shows here that the gross business by these companies in the year 1940 is approximately \$6,080,000. Assuming that figure to be correct—and it is merely a matter of computation—will not the business of the unified lines in this territory far exceed that of all of the so-called competition combined?

A. No; I would not say so.

Q. If you will refer to Exhibit B-6, Form B. M. C. 45 of the application in Docket 1612, it appears that the revenue of Horton Motor Lines for the 12-month period ended December 31, 1940, was \$4,250,000, and of Barnwell Brothers, Inc., \$2,066,000, and of Arrow, \$1,468,000. And those figures taken from your exhibit are correct, I assume.

509 A. I don't happen—I mean it is not my exhibit.

Q. Well, this is an exhibit of the applicant company.

A. I am not part of the applicant.

Q. Well, you are one of the companies that joined in this unification.

Mr. SULLIVAN. Not he himself.

The WITNESS. The Transport Company.

By Mr. WIERUD:

Q. Well, assuming those figures are correct, that would be a sum in excess of the combined business of the independent companies that you have enumerated.

A. Well, the combined. That is outside of the territory.

Q. You are referring to—

A. The income which Horton—which you quote for Horton and Barnwell is not derived from this territory that I am in.

Q. Well, neither is that of the independent companies.

A. Yes; it is.

Q. Not wholly.

A. Almost entirely.

Q. Well, not entirely.

A. I would qualify it by saying 95 percent of it.

Q. Do you know how much of the business of the combined or unified companies would be represented from operations in this territory?

A. I would not know that, but I do know in proportion to the total income that it is a small part of it.

510 Q. You do not know what part?

A. No, sir.

Q. There will be other witnesses to testify to that?

A. There will be one here who can tell you.

Q. What carriers involved in this unification parallel the lines of Arrow?

A. None of them.

Exam. BAKER. Did you understand his question, Mr. Ackerman?

The WITNESS. Well, if he means in part touches a small part of our area, I will say yes.

Exam. BAKER. I think that is what he means. Isn't it, Mr. Wiprud?

The WITNESS. I thought—

Mr. WIPRUD. Well, yes; that is what I mean. I will ask the question another way.

By Mr. WIPRUD:

Q. The lines of what other carriers in this unification—what lines of other carriers in this unification are competitive with Arrow?

A. None.

Q. Well, will you explain your answer in view of the information shown on the exhibit?

A. I have not seen the exhibit.

Mr. SULLIVAN. He is looking at a map.

The WITNESS. There are no lines in the unification that  
511 are competitive to Arrow.

Mr. WIPRUD. Well—

The WITNESS. Some of their routes may parallel, but the business is not competitive.

By Mr. WIPRUD:

Q. Well, will you explain your answer?

A. There is no business which anyone in the unification does that originates in our territory and is destined to points in our territory. The business which they do in our territory would come from outside of the territory, or will be consigned from that territory where we operate to points where we do not serve. In other words, there is no competitive trade there.

Q. Now, take the operation between Sunbury and Scranton. Arrow Carrier Corporation operates between those two points, does it not?

A. Yes, sir.

Q. So does the Horton Line.

A. I will have to qualify that.

Q. What is your answer?

A. I would say no.

Q. Well, they operate between those two points.

A. No. They operate over that route; they do not operate between those two points.

Q. They do not serve those points?

A. They serve them, but they do not serve between them.

Q. Is there restriction?

512 A. They have no intrastate rights in the state.

Q. How about Moran Transportation Line?

A. No, sir.

Q. No. I mean Barnwell Brothers. Excuse me. They operate between those two points, do they not?

A. No, sir. They operate over those routes, but the freight which they pick up or deliver originates outside of this territory that Arrow serves or is destined to points outside of the territory.

Q. Do I understand that neither Barnwell Brothers nor Horton have intrastate rights?

A. No, sir.

Q. In the State of Pennsylvania.

Is that true of the other states in which they parallel your lines?

A. There are no intrastate rights—no intrastate authority required in New Jersey. But I don't know that they handle—either Barnwell or Horton handle any intrastate shipments within the State of New Jersey.

Q. How about the State of New York?

A. I would not know that they did there.

Mr. SULLIVAN. Neither Horton nor Barnwell run into the State of New York, except New York City.

By Mr. WIPRUD:

513 Q. Is it your testimony, then, that insofar as operating rights are concerned, none of these lines, that is, Barnwell and Horton, have intrastate rights over any of the routes that parallel your lines?

A. That is right.

Q. So, insofar as Arrow Carrier Corporation is concerned, its chief value to this unification is its intrastate rights?

A. No; I would not say that. I would not confine it to that.

Q. Well, what else would it contribute to this unification?

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A. Well, if you take the Pennsylvania territory, and the territory in New York State from Binghamton north, there is no direct connecting lines through that whole territory which serve it, and through this unification it would be possible.

Q. Will you illustrate that, Mr. Ackerman?

A. Let us say shipments originating in Rochester, Syracuse. They have to take them to New York City before they can ship them to eastern Pennsylvania. This way, with the unification, we can take them from Binghamton, Arrow, to distribution points, and vice versa.

Q. Well, wouldn't such a movement today move via the Moran Line?

A. Moran does not deliver in the territory that we serve in Pennsylvania.

Q. Is it a question, then, of interchange between Moran and yourself?

A. We do not interchange.

514 Q. You do not interchange? Any other illustrations?

A. No. I think that covers the illustration—I mean that illustrations covers it. You can mention any number of points in the northern New York area.

Exam. BAKER. Mr. Ackerman, will you face the Reporter, please.

By Mr. WIPRUD:

Q. Is it your statement that Horton has no intrastate rights in Pennsylvania?

A. To the best of my knowledge, he has not.

Q. How many vehicles does the Arrow Carrier Corporation have, approximately?

A. We have 86 trucks, 100 tractors, and 97 semitrailers.

Q. You heard the testimony of some of the other witnesses as to the advantages which they claim will accrue by reason of this unification?

A. I heard Mr. Arbour and Mr. McCarthy—part of it.

Q. Did you hear the estimates of possible savings that will be effected?

A. No; I did not.

Q. Do you agree that there will be any savings?

A. Yes; I do.

Q. Have you any opinion as to the amount of savings that might accrue?

A. I have.

Q. Do you care to state it for the record?

515 A. I believe that a great many economies will result. The matter of insurance alone will be a very large item, and by self insurance I think at least 25 percent of the insurance

bill would be saved. All large purchases of equipment, such as tire contracts, gasoline contracts, trucks, truck purchases, et cetera, could be much more advantageously made with the buying power that the unified line would have. There would be an avoidance of, in some cases, duplicate pick-up and delivery trucks. There would be some elimination of duplicate terminal facilities.

**Q.** Then, in your opinion, there would be a reduction in the cost of operating the unified lines as against the cost of operating the lines of the independent?

**A.** Yes, sir.

**Q.** And is it proposed to reflect the savings to the public by way of reduced transportation costs?

**Exam. BAKER.** Mr. Wiprud, I do not believe Mr. Ackerman is qualified to answer that. He is not a representative of applicant himself.

**Mr. WIPRUD.** I wonder if Mr. Ackerman would care to express an opinion as to whether or not it would be reflected in the reduction of transportation costs.

**The WITNESS.** I believe that it would be reflected in stabilization of rates. I believe that—

**By Mr. WIPRUD:**

**Q.** Stabilization upward or down?

516 **A.** Stabilization at the present point. It would certainly make it possible—possibly would make it possible to maintain the present rates in view of rising costs for a longer period than they could be maintained with the companies operating individually.

**Q.** Just one more—are you through?

**A.** Yes.

**Q.** Just one more question, Mr. Ackerman. Has Arrow enjoyed the increase in business that has been testified to by these other companies for the past several years?

**A.** Well, I did not hear the figures that were testified to, but I can say that our business has increased by 150 percent since 1937, I believe.

**Q.** According to the exhibit that I have in my hand, the net profit of Arrow Corporation, before taxes for the year 1939, was \$147,134.77, and the following year, 1940, it dropped to \$92,564.17. That was the year, I believe, that the Transport Company entered into a contract with Arrow.

**A.** Yes.

**Q.** Can you explain that reduction?

**A.** Offhand, I can't.

**Q.** During that period, that is, 1940, to the period ended April 30, 1941, were any bonuses paid by your company?

**A.** No bonuses of any nature.

517 Q. According to Exhibit I attached to your agreement, or agreement between Transport Company and Associated Transport involving Arrow, there appears some nonrecurring items, one of which is in the amount of \$11,000 to John E. Ackerman. Will you state what that is?

Mr. SULLIVAN. Just a minute. The exhibit you are showing him is an exhibit from your copy of the application, Mr. Wiprud.

Mr. WIPRUD. Yes; it is.

Mr. SULLIVAN. Exhibit I.

Mr. WIPRUD. Exhibit I.

Mr. SULLIVAN. That Exhibit I, however—the exhibit number is the exhibit number of the contract and not the exhibit number of the application, is it not, Mr. Wiprud?

Mr. WIPRUD. Well, Exhibit I follows a summary of the contract between Transport and Associated for the acquisition of Arrow.

Mr. SULLIVAN. May I put this on the record: It is Exhibit I of the Arrow contract. Do you mind if I say it that way?

Exam. BAKER. I think the record is clear now, Mr. Sullivan.

Mr. SULLIVAN. You were not a party—

The WITNESS. I don't believe it is any exhibit of our carriers.

Mr. SULLIVAN. Excuse me, Mr. Examiner. I will take it up with him, but it is not an exhibit of our carriers; it is an exhibit of Transport Company, and Mr. Ackerman was not a party to it, so he does not know anything about it.

Exam. BAKER. Well, if Mr. Ackerman does not know, of-course, he should so state.

The WITNESS. That is what I said. It is not my exhibit. I don't know who put the exhibit in.

Exam. BAKER. Well, do you have an explanation for the item—perhaps I can clear it up. It is represented here that certain items, expense items of Arrow Carrier Corporation, for the year ending April 30, 1941, will not recur. The items listed are boat expense, \$5,700; John Hamilton salary, \$7,200; John E. Ackerman, \$11,000; George F. Whitehead, \$6,000; James J. Buckley, Jr., \$9,000; moving of garage, \$1,893.70.

The WITNESS. Well, that clears it up. It was not my exhibit.

Exam. BAKER. Can you explain that?

The WITNESS. Yes. The \$11,000 would be reduction in my present salary from \$36,000 to \$25,000 to apply when, as, and if the Transport Company takes delivery of our carrier.

Mr. SULLIVAN. Excuse me. You have been receiving that larger salary for how long?

Exam. BAKER. Suppose you let Mr. Wiprud complete his cross-examination.

519 Mr. SULLIVAN. I thought he was through.

By Mr. WIPRUD:

Q. You say that that represents the difference between the \$25,000 that you have now agreed to and the \$36,000 which preceded it?

A. That is right.

Q. You have no explanation at this time of the reduction in the net income in 1940 over 1939?

A. I haven't got any figures here for 1940 to go by. I probably could go over it and give you the right answer, but I hesitate to guess at it.

Mr. WIPRUD. That is all.

Redirect examination by Mr. SULLIVAN:

Q. With respect to that Exhibit I of the Arrow contract to which Mr. Wiprud was referring, there was mention therein of reductions with respect to the salaries of Mr. Hamilton and of Mr. Buckley and of Mr. Whitehead.

A. That is correct.

Q. Does the amount shown after their names in Exhibit I represent the amount which their present salaries would be reduced after the commencement date of the contracts of employment that we have been talking about here?

A. I did not check those items as Mr. Wiprud read them off, but if I can hear them again—

Q. Put it another way. Will you tell us what you are presently receiving?

520 A. \$36,000 per annum.

Q. And how long have you been receiving that?

A. For many years.

Q. And under the contract of employment which we have referred to here previously you are to receive how much money?

A. \$25,000.

Q. Now, with respect to Mr. Whitehead, what does he presently receive?

A. \$18,000.

Q. Has he received that for some time?

A. Yes, sir.

Exam. BAKER. All these figures are for a year, are they not?

The WITNESS. That is right.

By Mr. SULLIVAN:

Q. And what is the provision of the contract that he is to receive?

A. \$12,000.

Q. And with respect to Mr. Buckley?

A. He receives \$18,000.

Q. And—

A. He will receive \$9,000.

Q. He will receive \$9,000. And Hamilton is not to receive any?

Exam. BAKER. What was his salary before?

The WITNESS. \$7,200 per annum.

521 Mr. WIPRUD. May I ask one question?

By Mr. WIPRUD:

Q. Is Arrow one of the companies short of working capital?

A. No, sir.

Mr. WIPRUD. That is all.

By Mr. SULLIVAN:

Q. May I ask you this: Is that a matter of opinion from your point of view of your business as you operate it?

A. That is a matter of opinion. I think it is a correct one. But that condition changes from day to day. We have no means of telling whether next month we will be short of working capital or not.

Q. And how are you fixed with respect to equipment at the present time? Have you an adequate amount of equipment, or are you short of equipment, or just enough.

A. We are working everything at peak. We have just purchased an additional 10 trucks.

Q. What arrangements did you make to purchase those trucks? Financial arrangements, I mean.

A. We did not agree to any terms.

Q. Do you contemplate paying cash for them?

A. It depends on what our position is when the trucks are delivered.

Q. So far as your position with respect to working capital, you have not made up your mind how you are going to pay for them?

522

A. That is right.

Q. How much are the trucks?

A. About \$5,000 apiece—no; \$5,500 apiece, with cabs.

Q. Did you say how many you ordered?

A. Ten.

Q. Would that adequately take care of your present situation?

A. Yes. I don't know whether it will be next month.

Q. By the time they are delivered, when, as, and if they are delivered, would you be able to say today that they will be able to adequately take care of the shipping public in that territory?

A. No, I couldn't say.

Mr. SULLIVAN. That is all.

Exam. BAKER. Any further cross-examination? Redirect examination?

By Exam. BAKER:

Q. Mr. Ackerman, legally which company is the operating company today, the Transport Company or the Arrow Carrier Corporation?

A. I couldn't answer you. I don't know, sir.

Q. You do know, do you not, that the Transport Company has leased—

A. Yes.

Q. The operating rights and properties of Arrow Carrier Corporation?

523 A. Yes, sir. They leased it, and we were able to continue to do things just as we had in the past.

Q. Has there been any change in name on the billhead?

A. Yes, sir; Transport Company, leasee. I believe it reads "Transport Company, leasee of Arrow Company Corporation," or something like that. We followed legal advice in making up the letterheads, and so forth.

Q. And are your tariffs carried the same way—tariff publications?

A. I believe they are. All our customers pay us in the name of Arrow Carrier, and our bank accounts are in the name of Arrow.

Exam. BAKER. I might ask counsel whether or not in his opinion the Arrow Carrier Corporation is the operator, or is it the Transport Company?

Mr. SULLIVAN. Do you want an immediate answer?

Exam. BAKER. If you care to give it.

Mr. SULLIVAN. Well, of course, it would be my conclusion that by virtue of the lease, which I have not had an opportunity to examine very carefully; only casually in connection with other matters—that by virtue of the lease the Transport Company would have to be the operating company, but it may be that there is some provision in the lease to the contrary. I was not a party to that deal, and we have been so busy with this application that  
524 we have not had time to study it beyond that point.

By Exam. BAKER:

Q. Mr. Ackerman, are you familiar with the financial statements purporting to be the financial statements of Arrow Carrier Corporation which have been filed with this application?

A. No, sir; I am not familiar with them. The auditors have drawn all those reports, and they have been in our place so much and gotten so much information, I don't know what has been filed. I have our own financial statement here. They have made adjustments just as they did—arbitrary adjustments in the non-recurring items. That I am not familiar with.

Q. What I have in mind is this: I want to ascertain whether or not the financial statements reflect the operations conducted either by Arrow or by the Transport Company without regard to the existence of the lease between those two companies. Could you enlighten me on that?

A. As to what you have there? I know what I have here, Mr. Examiner.

Mr. SULLIVAN: No; that is not his question, Mr. Ackerman.

Exam. BAKER: Do you know what—

Mr. SULLIVAN: I think you have in mind something he spoke to me about.

Did you tell me, Mr. Ackerman, something about entries having been made on your books to reflect the lease?

The WITNESS: The rental?

325 Mr. SULLIVAN: The rental.

The WITNESS: I don't think that was the Examiner's question.

By Exam. BAKER:

Q. I did not ask specifically about the rental. I wanted to know whether these statements, income statements, in this application reflect the situation from an operating standpoint as if the lease did not exist.

A. I believe they do.

Q. There has been no deduction for any rentals paid to the Transport Company?

A. There have been some entries made, but they were sort of a washout entry.

Mr. SULLIVAN: I believe the other way.

Exam. BAKER: They would be a rental payment to Arrow Carrier Corporation. But these statements do not reflect any inter-company payments; is that correct?

The WITNESS: That is right; no payments.

Mr. SULLIVAN: May I say that, as I understand that situation, Mr. Examiner, the lease substantially provides that the rental shall be equal to the profits and that by leaving the books substantially as they were and entering off-setting items, which I understood they do, leaves it just as you say; that is, as if there were not a lease.

Exam. BAKER: Well, technically, the income statement of Arrow Carrier Corporation would consist merely of the net  
526 income without any expense items whatever, would it not?

Mr. SULLIVAN: That is right.

Exam. BAKER: I think Mr. Reicher will probably be able to clear it up.

Mr. SULLIVAN: He will clear it up.

By EXAM. BAKER:

Q. Mr. Ackerman, have any steps been taken to call for redemption of any of the preferred stock which is now outstanding?

A. No, sir. The terms of the agreement were that the buyer would call the stock at 105 when title was taken.

Q. With respect to the salary, rather, the employment agreements which have been referred to, you no doubt are cognizant of the objections made last year by the Commission to the existence of numerous employment agreements in connection with the proposed merger into the Transport Company.

A. Yes, sir.

Q. In the light of that, what would be your position with respect to cancellation of the employment agreement with yourself?

A. We would not agree to it.

Q. You consider that as a valuable personal right?

A. Yes, sir.

Mr. SULLIVAN. Before you leave that, Mr. Examiner, I want to point out to you that Mr. Ackerman is bound by the terms  
527 of that contract not to enter the trucking business east of the Mississippi River for five years, and that we feel that that is a very valuable asset The Transport Company had to offer here, that coupled with his employment agreement.

EXAM. BAKER. I realize it is a corollary proposition.

Mr. SULLIVAN. Yes. I simply wanted to point out the corollary part of it.

By EXAM. BAKER:

Q. Mr. Ackerman, isn't it true that a large portion of the traffic transported by Arrow—I will continue to say Arrow—is silk and silk products?

A. I would say that less than 50 percent of our gross, probably 40 would be a closer figure—40 percent of our gross is derived from real and synthetic silk products.

Q. What effect is likely to result on the operations of Arrow from the recently imposed restrictions on the processing of silk?

A. Our business has increased since the restriction was imposed—our receipts, our daily receipts.

Q. Well, do you feel that that is a permanent condition or is it just a temporary increase in anticipation of the effect, subsequent effect of those restrictions?

A. No. That is without any real silk shipments at all in those figures, in those receipts.

Q. You feel that other articles will make up—

A. Well, perhaps I can better explain it this way: The real silk that we haul only amounts to about 7 percent of our  
528 gross receipts.

Q. I think that clarifies your statement. You mentioned it was your practice to honor shippers' routings. Could you state generally what proportion of your interchange traffic do the shippers specify the routing?

A. Almost a hundred percent.

Q. Is that generally true in the motor carrier business?

A. I would not know about the other carriers.

Q. Does your company transport any considerable traffic between Binghamton, New York, and New York City?

A. No, sir; not very much.

Q. I take it your position is with respect to competition that although certain of the carriers involved in this unification might under their operating rights be empowered to compete with Arrow Carrier Corporation in certain respects, that as a practical matter they do not compete; is that correct?

A. Yes; and I think their authority to compete is very limited, very greatly restricted. When you mention Binghamton and New York, we would be in competition with Moran. I believe they run from Binghamton to New York.

Q. And I believe there is also the possibility of competition between your company and Barnwell, say, between Harrisburg, Pennsylvania, and New York City; is there not?

A. I did not know that Barnwell had rights between Harrisburg and New York; but if there is any competition there 529 it is very small, because the outbound freight out of Harrisburg does not amount to very much.

Q. The total operating revenues of Arrow in 1940 were a little less than the total operating revenues in 1939. I believe that is the only one of the carriers involved in this unification which shows a reduction in total operating revenues. Do you have any explanation for that?

A. No; I do not. I mean at this time I do not have it. I would like to look the records over.

Q. Mr. Wiprud referred to net income; I referred to total operating revenues.

A. Yes. I believe Mr. Reicher when he testifies, could give you some answer to that, because he has dealt with it; I have not.

Q. Has there been any change in the rate situation generally?

A. Not generally. There has been a slight reduction in the general average, the over-all average, probably due more so to handling a little greater volume of low class freight at a lower rate rather than a reduction in any volume.

Exam. BAKER. That is all the questions I have of this witness.

Mr. SULLIVAN. That is all I have.

I would like to ask Mr. Whitehead two or three questions so I will not have to bring him back tomorrow.

Exam. BAKER. Very well. You are excused.

530 (Witness excused.)

Mr. SULLIVAN. Take the stand.

GEORGE F. WHITEHEAD, being first duly sworn, testified as follows:

The WITNESS. George F. Whitehead.

Direct examination by Mr. SULLIVAN:

Q. You reside where, Mr. Whitehead?

A. 485 Belmont Avenue, Haledon, New Jersey.

Q. You are employed by what company?

A. The Arrow Carrier Corporation.

Q. How long have you been employed by that company?

A. Twenty-one years.

Q. Are you an officer of the company?

A. I am.

Q. What officer?

A. Vice president.

Q. Are you a stockholder or—put it this way—a stockholder subject to these contracts with The Transport Company?

A. I am.

Q. And a substantial one, without bothering with the details?

A. Yes.

Q. What specific part of the operations of the Arrow Company are you concerned with?

A. Sales.

Q. And are you in charge of sales?

531 A. Yes.

Q. In the course of your duties do you have occasion to travel?

A. Practically continuously.

Q. In what territory?

A. Throughout the entire northeastern Pennsylvania and New Jersey and such surrounding states in which sales executive offices are maintained, and as far west as Chicago, and Boston.

Q. I take it you mean by "sales executive offices" shippers?

A. That is right.

Q. Or customers?

A. That is right.

Q. And do you come in contact with customers of the Arrow Company?

A. Yes.

Q. May I ask whether it is extensive or not—your contact?

A. Yes.

Q. Have you had conversations with shippers with respect to the feasibility, advisability, or inadvisability of a merger such as is projected here?

A. I have.

Q. And from your conversations with them do you feel you are able to give us the reactions of shippers?

A. It is favorable.

Q. Could you give us any idea of how many shippers you may have talked to with respect to this matter?

532 A. Well, principally I have talked to shippers who have movements into what we would consider as overhead territories, territories beyond that served by our own company, and practically all of the shippers that I have spoken to in that respect have felt that the merger, if approved, would be beneficial both from a service angle as well as for stabilization of rates.

Q. And are these shippers you talked to presently customers of your company?

A. They are.

Q. Many of them are presently customers of other companies in the projected merger as well as companies not in it?

A. That is right.

Q. I ask you what you presently receive as salary from Arrow.

A. \$18,000.

Q. You have received that for some time?

A. I have.

Q. By virtue of the agreement which you made with Kuhn, Loeb, relative to the sale of stock of Transport Company you will have a contract, if this merger is approved, under which you will receive some lesser sum?

A. That is right.

Q. And that would be the amount testified to here, \$12,000?

A. That is right.

533 Q. You are also under that contract bound not to engage in the trucking business east of the Mississippi River for five years from the effective date of the agreement.

A. That is right.

Q. Now, you have heard the testimony of Mr. Ackerman with respect to advantages to the general public arising from this deal, as well as advantages to the operating companies, improving their service, have you?

A. I have.

Q. You have heard at least some of the testimony of Mr. Arbour and of Mr. McCarthy?

A. That is right.

Q. With respect to the same matters?

A. That is right.

Q. Do you agree with the testimony?

A. I do.

Q. Have you anything you care to add to that?

A. Well, the only point that I have to add to that is it will be an expedited service in the operations to eastern New York State, which a great number of the shippers in our territory are particularly interested in. It also will have its advantages into the south, and one point that I know particularly is that it establishes a parallel through service. I might say, north to south, in comparison to the existing through services that run east and west at the present time, which the north and south movements—  
534 the shipping public don't have the advantage of through service the same as on east and west movements. I think that our own company with respect to the affiliated companies in the combine would serve a radial operation in the metropolitan area forming a connecting link from that industrial territory to eastern New York State, to New England, and to the south.

Q. What would you say as to whether or not a rather unfortunate gap might be left in this proposed merger if Arrow were not included?

A. I think that would exist.

Q. And is Pennsylvania rather an industrialized state within itself?

A. It is. There is a rapid change becoming effective in Pennsylvania due to migration of industry in the last couple of years, and I think that portion of eastern Pennsylvania is going to become more highly industrialized than what it has in the past.

Q. Do you find in your dealings with your customers in offering them a general widely useable service, that your intrastate rights are of value?

A. I do.

Q. Is it an advantage to you as a salesman—

A. It is a particular advantage. I can cite one particular instance. Before our general freight rights were granted to us, and when we operated on restricted rights, we could  
535 handle certain restricted commodities into certain mills, and it seemed strange that a shipper of numerous commodities could only ship a restricted amount of commodities by our service and would have to utilize the service of another carrier to ship the remainder of the commodities; whereas after our intra-

state certificate was granted both the shipper and the consignee could take advantage of the service in its entirety.

Q. Would you say that is an example of a smaller scale, that this service would be offered to the shipper on a larger scale under this unification?

A. Yes. There will be that advantage having concentration in that respect.

Mr. SULLIVAN. I think that is all the questions I have to ask him.

Exam. BAKER. Cross-examination.

Cross-examination by Mr. WIPRUD:

Q. Mr. Whitehead, I may be anticipating the Examiner, but who is the operator of Arrow?

A. Who is the operator? Transport Company.

Mr. WIPRUD. Off the record.

(Remarks off the record.)

By Mr. WIPRUD:

Q. Well, Mr. Whitehead, what have you to say about the increase in business in 1940 over the year 1939? Was there an increase?

A. Yes. The increase in business in 1940 over 1939 I think is due partially to a change in industrial conditions within the territory plus the results of concentrated sales activity upon the accounts available, plus the superior service which I believe our company renders in the territory.

Q. You have no information in regard to the net income for those two years, 1939 and 1940?

A. No; I do not.

Q. Were any of the shippers that you talked to with regard to this proposed unification in favor of the prior unification?

A. Were in favor of the prior? Yes.

Q. Insofar as interstate business is concerned, the operations of Horton and Barnwell parallel the routes operated by Arrow; is that right?

A. That is right.

Q. So insofar as interstate business is concerned they are competitive?

A. No, sir.

Q. You have no interstate business?

A. We handle interstate business but the interstate parallel routes are not on a competitive basis. I believe there is a parallel route, as stated by the Examiner between Binghamton and New York, on which we might be competitive with Moran, but our activity in the Binghamton territory has been such that we

537 are not on a competitive basis. Likewise the same thing of Barnwell between Harrisburg and New York. We have not noticed the competition of Barnwell at Harrisburg at all.

Q. Well, so far as interstate business is concerned is there any reason why that business could not be transported under the interstate operating rights of Barnwell and Horton?

A. No, because Barnwell's interstate operating rights are restricted to those points which I have just mentioned. Horton's interstate rights running from the south into our territory would not give him the advantage of serving eastern Pennsylvania and metropolitan New York; therefore we are not on a competitive basis. The same way with Barnwell and the same way with Moran. Moran has no intermediate service between Binghamton, to the best of my knowledge.

Q. Then, it is purely a matter of restrictions in existing interstate rights?

A. Restrictions in existing interstate rights as to the territory which they served prior to regulation and have served since regulation.

Q. Yes.

Mr. WIPRUD. I believe that is all, Mr. Examiner.

Mr. SULLIVAN. I have no further questions.

Exam. BAKER. Witness excused.

(Witness excused.)

Mr. SULLIVAN. Thank you for extending the time, Mr. Examiner.

538 Exam. BAKER. We will adjourn until 9:30 a. m. tomorrow.

(Whereupon at 5:30 p. m., August 20, 1941, the hearing in the above-entitled matter was adjourned.)

539 Before the Interstate Commerce Commission

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—ARROW  
CARRIER CORPORATION, ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

HEARING ROOM "B,"

I. C. C. BUILDING,

Washington, D. C., Thursday, August 21, 1941.

Met, pursuant to adjournment, at 9:30 a. m.

Before VERNON F. BAKER, Examiner.

Additional appearance: David Grant MacDonald, 16 Parkside Road, Silver Spring, Md., appearing for the Antitrust Division, Department of Justice.

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## PROCEEDINGS

Exam. BAKER. Come to order, gentlemen, please. You may call your first witness.

Mr. COCHRAN. Mr. Hester.

JOHN R. HESTER, being first duly sworn, testified as follows:

Direct examination by Mr. COCHRAN:

Q. State your name and place of residence.

A. John R. Hester, Salisbury, N. C.

Q. What is your business?

A. Textile finishing, bleaching, and manufacturing.

Q. With what company or companies are you connected?

A. The North Carolina Finishing Company, the North Carolina Fabrics Corporation, and the Alexander Manufacturing Company.

Q. What positions do you occupy with those three companies?

A. With the first two companies, I am secretary and assistant treasurer; and I am vice president of the latter company.

Q. Where are those companies located, and where are they doing business?

A. The North Carolina Finishing Company and North Carolina Fabrics Corporation are located at Salisbury, N. C., and that is where they do business. That is where their plants and facilities are located. The Alexander Manufacturing Company is at Forest City, N. C.

Q. Are those companies manufacturers of certain textile  
541 products?

A. The Alexander Manufacturing Company manufactures white cotton bed sheeting, and the other two companies bleach, dye, and finish textile piece goods.

Q. Mr. Hester, how long have you been connected with those three companies?

A. Well, with the North Carolina Finishing Company, which is, you might say, the parent company, 11½ years.

Q. In your position as secretary-treasurer, or assistant treasurer, of these companies, do you supervise or handle the shipping of goods in and out of your plants?

A. Yes; I do.

Q. Is that also true of the plant located at Forest City?

A. That is true in a general way. The distance is so great that I do not exercise day-by-day supervision over Forest City, but I know from records what is shipped.

Q. Will you please state, Mr. Hester, to what territory the goods that are passed through your mills goes by way of freight, rail or motor?

A. All over the United States; all over the United States, although I would guess—and this is purely an estimate—that at least 60 percent of them go to the metropolitan area.

Q. What do you mean by "the metropolitan area"?

A. New York City and the area immediately surrounding it, we will say within 25 miles.

542 Q. In the shipping of goods from your plant, you say approximately 60 percent will go to the metropolitan area.

A. Right.

Q. And the remaining 40 percent would be distributed in what area?

A. All over the United States. That is just a guess.

Q. I understand.

A. Yes.

Q. Where do you receive the goods that come into your plant; from what points are they shipped?

A. Well, I would say—

Q. Generally speaking.

A. Ninety percent is from gray mills in the South. By "gray mills," I mean mills that make cotton and rayon, but the woven fabric is in North Carolina, South Carolina, Virginia, Georgia, and Alabama.

Q. Do most of those goods come to your plant by way of rail or motor?

A. I would say that most of the incoming movement is by rail.

Q. What percentage of the outgoing movement of your freight is by motor, if you know?

A. Well, I could give you exact statistics for the 12 months ending July 31st.

Exam. BAKER. Is that July 31, 1941?

The WITNESS. 1941; yes, sir.

543 The percentage of rail was 43 percent; motor, 57 percent.

By Mr. COCHRAN:

Q. Mr. Hester, in pounds or tons, will you give us an estimate or the exact figures, if you have them, of the amount of freight shipped out of your plants during any period?

A. The North Carolina Finishing Company during that year ending July 31, 1941, shipped slightly over 38,000,000 pounds, and the North Carolina Fabrics Corporation during the same period shipped—it is a much smaller plant—slightly over 6½ million pounds, and the Alexander Manufacturing Company during the same period shipped slightly over 2½ million pounds. The wide variation in those figures is due to the fact that the Finishing Company and the Fabrics Corporation are custom dyers and finishers, and they handle goods, in and out, woven by a great many mills, whereas Alexander, of course, weaves its own product.

Q. Have you available at your plant sufficient transportation facilities at present?

A. Oh, yes.

Q. Will you give us some estimate of the number of motor carriers that you actually use in the transportation of goods from your plants?

A. I prepared a list at random yesterday, Mr. Cochran, which I will be glad to read or enumerate, as you wish.

Q. Read it, please, sir.

544 A. Well, we have shipped recently, and are shipping, and would ship at any time, on order of our customers, goods via the following lines: Barnwell Brothers, Inc., Horton Motor Lines, Transportation, Inc., Akers Motor Lines, Atlantic States Motor Lines, L. H. Bottoms, Carolina Motor Express, Carolina Freight Carriers, Colonial Motor Freight Lines, Davis Motor Line, E. T. & W. N. C.—that is the Eastern Tennessee and Western North Carolina—Motor Lines; it is usually abbreviated as E. T. & W. N. C.—Frederickson Motor Express, G. & M. Transfer Company, Harris Brothers Transfer Company, Lewis & Holmes Motor Lines, Miller Motor Express, Roadway Express, Shaw Transfer Company, Mason & Dixon Lines, Billings Transfer Company, and Great Southern Trucking Company. There may have been more, I just picked the ones I know we have used fairly recently.

Q. Are there other trucking companies operating along your plants?

A. I am sure there are, Mr. Cochran. I could not at the moment name them, but I am quite sure there are other plants that operate by our plants, and which we have not used.

Q. Do you recall the names of the companies referred to in this application, which is an application for consolidation of motor carriers?

A. I am quite familiar with the southern ones, and in a general way with the northern units.

Q. Name the southern companies, if you please.

545 A. The southern companies, as I understand it, are Horton Motor Lines, Barnwell Brothers, Transportation, Inc., and Southeastern Lines.

Q. Do you do any business with McCarthy Freight System?

A. No; I do not.

Q. Consolidated Motor Lines?

A. I do not.

Q. Moran?

A. I do not.

Q. Arrow Carrier?

A. No; I do not.

Q. Do you know where those carriers are located?

A. I know in a general way that they are located in the East, but I do not know the range of their operations.

Q. You do not use the Southeastern?

A. We do not use the Southeastern.

Q. It does not operate by your plant?

A. I am not sure of that, but I do not think it does. In any event, we do not use it.

Q. In the event of the consolidation of these companies just mentioned, and we are more particularly talking about Barnwell, Horton Motor Lines, and Southeastern, would there remain sufficient facilities, competitive facilities, for the transportation of your goods even if you did not use the Consolidated line?

546 A. Oh, yes.

Q. Mr. Hester, are you acquainted generally with the purpose, or have you talked with anyone concerning the purpose of this proposed consolidation?

A. Only in a general way. I have not gone into the detailed reasons for the consolidation.

Q. You arrived in Washington this morning, Mr. Harris?

A. Yes, sir.

Q. And you have not discussed this in detail with any attorneys?

A. I have not.

Q. Or representatives of the companies?

A. I have not had the opportunity.

Q. Do you think of any advantages that might accrue to the shipping public and the public generally by reason of the consolidation of these companies into a unified operation?

A. Very definitely.

Q. Will you name some of them.

A. For example, we use daily, or almost daily—well, I will say daily—Horton, Barnwell, and Transportation. We rarely—almost never, I might say—have sufficient tonnage to load the truck of any of those three. Usually it is, a partial load, sometimes

even less than a half load. If the consolidation were consummated, it would mean that we would be able to put into one trailer the freight that now goes into three, which means that it would be possible for us to dispatch those shipments to our customers and to their customers, which would not otherwise be possible. The reason for that is that we could be loading that trailer all during the day. An empty trailer could be there. That arrangement was attempted once with one of the carriers in question, Barnwell, but the insufficiency of the tonnage made it infeasible; it had to be abandoned. We could load our freight all during the day, and at the end of the day, when the final parcel went into that trailer, it could be pulled out for immediate dispatch to the metropolitan area, which means, it seems only reasonable to suppose, that a good many hours would be saved in transit, because of the necessity for stops that exist now with all three companies would not be present.

Q. Could you give us the percentage of freight shipped by you that is now carried by Horton, Barnwell, and Transportation?

A. The percentage of our total?

Q. Yes; so far as motor carriers are concerned.

A. I would say between the three of them they would take possibly 25 percent.

Q. And the remainder is carried by these other carriers?

A. Other carriers; yes.

Q. What other advantages do you see in this consolidation, if any, that might inure to the benefit of the shipping public?

A. Well, I could think of the advantage which comes from the elimination of transfers en route, decrease of breakage, decrease of bad order shipments. For example, in our rayon business, most of the shipments are made in cartons, and, of course, cartons are particularly susceptible to breakage in transit. If it were possible to load a trailer at our plant, it would not break until it got to New York City, and then it is only reasonable to suppose, I think, that the breakage would be reduced tremendously. The percentage of bad order parcels—

Q. Would there be any benefit to the shipping public arising out of the ability to trace claims and to adjust them more promptly?

A. That seems to me also reasonable.

Q. Would the fact that transfers would be eliminated tend to expedite the service?

A. Oh, yes; I just brought that out, that, I think, based on my experience, on shipments from our plant to the metropolitan area would save a good many hours; in other words, from three to seven hours, which could possibly have the effect of placing our plant virtually overnight to New York City, whereas, for all

practical purposes, it is second morning. That is because the shipments get in there so late the following afternoon that they are of no use to the converter; he could not use them.

Q. They may as well just come in the next morning?

A. They may as well come in the next morning, which is 549 what the converter actually considers it—second morning delivery, and if the truck were dispatched straight through, the saving in time might—I say “might”; I am not familiar enough with the operating conditions, but I base this on conversation with operating heads of both Horton and Barnwell—might put us in the position of being overnight to New York, which would be a tremendous advantage to us in shipping, and a tremendous advantage to our customers.

Q. In your opinion, would the benefit which would inure to your companies also inure to the benefit of other shippers in more or less generally the same area?

A. Without knowing the conditions that other shippers have to confront, I could not say definitely, but it seems to me only reasonable that their problems would parallel ours.

Q. In your opinion, would such a consolidation as has been proposed here result in economies in the transportation of such freight?

A. That seems almost certain, that it would most positively result in economies for us. You can see that whereas we now have to load three trailers, we could load only one then, and there is another way in which we could save in our own operations. Under the present system of operation we have to set our parcels or containers out, and then load them separately—load them when the carrier brings his trailer in, but loading in solid trailers we would be able to run those containers 550 direct from our packing-room floor to the carrier's trailer; and when the final container was in we could close it up and be ready to go.

Q. And any other shipper, under similar conditions, could use the same system.

A. It would seem to me that other shippers' problems would be parallel to ours.

Q. Generally speaking, Mr. Hester, is it your opinion that such a proposed consolidation would benefit the public generally, as well as your business as an individual shipper?

A. It seems to me that it would, and I base that conclusion on multiplying the benefit to me by the vast number of shippers that would be affected. It seems to me that the aggregate benefit would be great.

Q. So far as you know, would the condition of other textile plants operating in the South be somewhat similar to yours with reference to shipments of their freight?

A. Yes; I think it would, very definitely.

Q. Is there a considerable number of such plants located in that general area?

A. Oh, yes.

Q. Just a moment—by which Horton, Barnwell, and Transportation, and these other companies that you named, as well as other carriers, operate?

A. Oh, yes; I would say so.

551 Q. As a matter of fact, the Carolinas particularly, and certain sections below there, have a large number of textile plants located in there.

A. Yes; they do.

MR. COCHRAN. Those are all the questions I care to ask this witness.

Exam. BAKER. Cross-examine.

Cross-examination by Mr. WIPRUD:

Q. Mr. Hester, to what areas or area does your freight move promptly by truck?

A. To what areas?

Q. Yes.

A. Well, I just brought that out. My guess—I mean, I do not have the exact figures—my guess is that 60 percent of it moves to the metropolitan area. By that I mean New York City and the area within a radius of 25 miles, and the rest of it all over the United States.

Q. Do all of the motor lines that you have listed here operate into New York?

A. I don't think so. I don't know exactly what their scope is, but I am quite positive that all of them do not. A good many of them do.

Q. You merely listed the motor carriers that serve your community.

A. That serve us; yes.

552 Q. Of those carriers, which carriers would you say would be the largest?

A. Of those that I have listed—do you mean to exclude Barnwell, Horton, and Transportation?

Q. No; I include them.

A. I would say that Horton, Barnwell, Atlantic States, Akers, Transportation, Harris Brothers, Miller Motor Express, Mason & Dixon. Now, you realize that this is purely an assumption or

guess. I have no statistics available as to their size. I mean I don't know; that is just my impression.

Q. Of those carriers that you have named as being the largest, what carriers are operating into the metropolitan area of New York?

A. Barnwell, Akers, Horton, Atlantic States, I believe, either directly or through connection in Philadelphia; I am not positive about that, but they pick up freight for New York; I know that—Davis—perhaps I didn't mention him—Harris Brothers, Miller Motor Express, Mason & Dixon.

Q. Is there competition at the present time between Barnwell and Horton?

A. I would say that there is.

Q. In the event that this application is approved, would it be your purpose to give all of the business into the metropolitan area of New York to the unified lines?

A. Not at all; not at all.

553 Q. As I understood your testimony, you were of the opinion that by this unification Horton and Barnwell, which are the operators involved in this unification, would be able to place at your plant a trailer that you could load to full capacity.

A. Load to full capacity. I am reasonably sure that the amount of freight that is routed by our customers—we don't control the routing; it is done by our customers in New York City; we don't control it, we follow their directions—and I am reasonably sure that maybe there would be sufficient tonnage between the two of them to load a full trailer; whereas now neither has a full trailer load.

Q. And that is true, of course, of the other carriers, too?

A. That is true of the other carriers.

Q. Then, to the extent that you could load the trailers of the unified line to full capacity, they would have preference over the so-called independent lines?

A. No; I would not say that, because we do not have the control of the routing. I have to bring that point out again. Let me make that clear.

Q. Go ahead.

A. That is to say, at the plants of the North Carolina Finishing Company, and the North Carolina Fabrics Corporation, they do custom work and most of our customers are in New York City. We follow their routing instructions. We do not have the initiative in the routing of that freight, but the freight

554 they route could be handled by us—the freight that they route via Horton and Barnwell could be handled by us much more expeditiously and economically if we were able to load both of them into one trailer instead of splitting it up.

Q. As I understand it, you cannot do that today?

A. We cannot do that today because they are two distinct operating companies.

Q. But you can do that, or you believe you will be able to do that, in the event that these lines are unified.

A. Yes.

Q. Then, to that extent, they would have preference insofar as you are able to control the business?

A. Well, I would have to say again that we could not give them any preference. We could not give them any preference. If orders come down from our customers routed via Horton and Barnwell, we would still have to reroute them Horton and Barnwell, just as we do today. We cannot ignore those routings. We follow those routings, and we would still follow those routings; but whereas they might say Horton and Barnwell, if consolidation were effect it would simply mean that Horton and Barnwell meant, probably, that we could use the one trailer for both, with economies to ourselves, and with the saving-in-transit time from our plant to New York City, because there would be no need, then, for intermediate consolidation of freight at intermediate points.

555 Q. Is it your opinion, Mr. Hester, that the unification would make possible considerable savings in time in operation between your plants and the metropolitan area?

A. I think it would.

Q. How would that be effected?

A. It would be effected in this way: When we can load—this is based on assumption that we can load a full trailer between the two, which would be true on most days—we could load one trailer between the two lines, and that trailer could go straight through. It would not have to be stopped at Greensboro, I think, in the case of Horton, and at Burlington, in the case of Barnwell, for further loading or reloading and making up a full load. Obviously, it would be economical for them to load that trailer to a full load, instead of a half load, as they do. They have to stop somewhere to load and reload, and that obviously takes some time. How much, I don't know, but it is apparent that it must consume some time, but what we would be anxious to do is to see that trailer depart from there and go straight through without necessity for stopping for additional loading before getting into New York.

Q. Coming back to this question of loading a full load, Mr. Hester, via the unified lines to be operated under the name of Associated Transport—

A. Yes.

556 Q. You would have the same situation as you would have the single company today.

A. I don't understand that.

Q. As I understand your reason for the partial loading, it is because of the shipper's routing.

A. Yes.

Q. And if the shipper routed today only to the extent of a part capacity of the trailer—

A. Yes.

Q. Of the individual company—

A. Yes.

Q. Would not that also be true after unification?

A. That would be true if you are to assume that the shippers would not care to use Barnwell and Horton after they had merged under the name of Associated. I believe that is theoretically the case; we would have to follow their routing. We would route via by any line which they directed; but I believe what you say is based on the assumption that they would not care to use the line as consolidated any longer. In that case, the same situation would exist, if we did not care to use Horton and Barnwell any longer because of the fact, or by virtue of the fact, that they had merged into another company, called Associated—and I don't even know the proposed name—but that would be true only in that instance, I think.

Q. Now, insofar as the movement of this trailer is concerned, what is the situation today insofar as the movement of  
557 freight by truck is concerned between your plants and New York City? Would the trailers move through?

A. I am quite sure they do not. It is only in a rare instance. Now, there are rare instances when we can give them a full trailer load, to either Barnwell or Horton, or Shaw Transfer Company, which is one of the smaller lines, and one of the lines I did not enumerate there. I would say that, without having statistics, that Shaw Transfer alone gets more freight, more outgoing freight from our plant, than Barnwell and Horton combined, and we give them full loads, but only rarely are we able to give Horton or Barnwell a full load. I mean, it just happens sometimes that there is sufficient tonnage on hand to give it to either one of them, but it is very rarely the case; it is unusual; as a rule, their trailers are only partially loaded.

Q. How far do these trailers go north into the metropolitan area?

A. How far do they go north? They go to New York City. That is my understanding. I am not entirely familiar with operating details of these lines. I am speaking purely as a shipper, but I know that we route some freight by them to New York City, but they break up into their delivery units. I don't know; I understand that they carry it right into the city proper.

Q. Well, what I am trying to ascertain is where the saving  
558 of seven hours comes in in the movement of this tonnage  
to New York, in the event that unification is approved.

Exam. BAKER. Mr. Wiprud, I do not believe this witness is  
qualified to answer questions along that line. It is really an  
operating situation, and, as he states, he merely knows the sub-  
ject from the standpoint of a shipper. I think those questions  
must necessarily be directed to the operating men.

Mr. WIPRUD. Well, if the Examiner please, is it not desired  
that I pursue the question, when the witness testified on direct  
examination that there would be a saving of from three to seven  
hours in this movement, as I understand it, to New York City?

The WITNESS. I believe I expressed that as an opinion, didn't  
I?

Mr. WIPRUD. Yes.

The WITNESS. That is an opinion.

Mr. WIPRUD. I want to know what your opinion on it is based  
on.

Exam. BAKER. I think he stated it was based on conversations,  
but I will permit it to come in.

The WITNESS. It is based on conversations. I do not represent  
myself as being qualified to go into operating details.

Mr. WIPRUD. I understand. I just wanted to find out on what  
you based your opinion.

By Mr. WIPRUD:

559 Q. Do you expect a reduction in rates from the economies  
that have been spoken of in connection with this proposed  
unification?

A. No; not necessarily.

Q. Do you think it would be an advantage to your plant if all  
of the lines serving New York City were consolidated?

A. If all of the lines serving New York City?

Q. Yes.

A. What do you mean by that—if they were all consolidated  
into one unit?

Q. That is right.

A. I wouldn't say that; no. I would rather not answer that  
question without reflection, but it seems to me on first thought  
that that would not be a desirable situation, if all the lines serving  
our plant to New York City were in one unit. I do not think  
that would be a desirable situation—if all of them.

Q. Do you think it would be of advantage to your plant if the  
carriers were unified that would have a dominant position in the  
trucking field between your plant and New York City?

A. What do you mean by "dominant position"?

Q. They would be the largest carriers.

A. Well, I can see no disadvantage in that. For example, the Southern Railroad Company, which is the only railroad that serves us, has a dominant position, certainly, as far as the rail carriers are concerned, and that has never reacted to our  
560 disadvantage.

Q. That railroad has a monopoly in railroad transportation there.

A. It does. I mean, naturally, we could use devious routes after a certain stage up the road, but it would be inefficient and time wasting, but I mean the fact that they have a dominant position, or virtually a monopoly, as far as rail transportation is concerned, has never reacted to our disadvantage.

MR. WIPRUD. That is all, Mr. Examiner.

EXAM. BAKER. Mr. Hester, you mentioned the Shaw Motor Lines.

The WITNESS. Shaw Transfer Company.

EXAM. BAKER. Shaw Transfer Company. To what points does it operate?

The WITNESS. Shaw Transfer operates, I believe now, under its revised authority, granted by the Commission, on cotton textiles, to points in Pennsylvania, as far as Philadelphia, and to points west of Highway No. 15. I am not quite sure. I would rather not answer that. I know he operates up into Pennsylvania on cotton textiles and a few other commodities. I am not certain what the other commodities.

EXAM. BAKER. He does not operate into New York City; does he?

The WITNESS. He does not operate into New York City.

EXAM. BAKER. Are substantially all of your outbound  
561 shipments routed by the consignees; are they? Do they specify the routing?

The WITNESS. Most of them are; yes, sir.

EXAM. BAKER. With respect to your shipments, that you now deliver to Transportation, Inc., to what points are they generally destined?

The WITNESS. To points south of Salisbury, which are, as a rule, Atlanta—he gets most of the shipments to Atlanta—and intermediate points, and, of course, we have a directly competing line with Transport, Inc., in Lewis & Holmes. That is another line operating for our plant. I think his northern terminus is High Point, which is slightly north of our plant.

EXAM. BAKER. Those are all the questions that I have.

By Mr. O'BRIEN:

Q. Mr. Hester—

Exam. BAKER. Pardon me, Mr. O'Brien. I did not know you were to have any questions.

Mr. O'BRIEN. It is perfectly all right, Mr. Examiner.

By Mr. O'BRIEN:

Q. What would be the results, so far as the employees of these various companies are concerned, in connection with the freight that you now load in three trailers, and which would necessarily be loaded into one trailer?

A. The employees of the trucking companies?

Q. That is right.

A. That, Mr. O'Brien, is a question; it is an operating question, which I am not qualified to answer. It has always  
562 been my experience, however, that—

Exam. BAKER. If you do not know, just state that you do not know.

The WITNESS. I just don't know.

By Mr. O'BRIEN:

Q. Now, in the case of the economies that you stated would result in such a situation, is it not a fact that both Horton and Barnwell operate and have terminals at Burlington and Salisbury, N. C.?

A. I don't know. I understand that Horton's consolidation is done at Greensboro, and Barnwell's at Burlington; but those are operating questions that I cannot answer. My understanding is from conversations with their operating men.

Q. Could you give us some idea, Mr. Hester, as to what the resulting economies would be which you have just stated would be the results of the approval of this merger?

A. Well, are you speaking of economies within the trucking companies themselves?

Q. I am speaking of them in the light of your testimony. I understood you to say that if this merger were approved, there would be resulting economies to your company.

A. To us?

Q. I am wondering—

A. Those economies would result from our not having wasteful double-handling of containers. As it is at present, we have to run those containers on a platform and wait for the carrier to come and then pick those containers up. We cannot always place convenient to the spot at which the carrier is going to back his truck, and, unfortunately, our facilities are limited for truckloading. We were built for railroad pri-

marily, back in the early days, many years ago before the advent of the trucks.

Q. Now, so far as the question of claims is concerned, which I believe Mr. Cochran asked you about, do you really believe that the question of claims for damage would be much smaller than now because of this proposed consolidation?

A. So far as the claims for damage are concerned, I can't answer that, because those claims are handled directly by our customers at the end of the line. They are naturally handled between the customers and the carrier. I do know that we from time to time receive complaints about our containers coming in in bad condition. The condition is not bad enough to warrant a direct claim, but the cartons are often broken up, apparently due to abuses in handling. Maybe the manufacturers can say exactly what causes it, and the cloth gets soiled. I know that there is a fair amount of that, but that does not, so far as we know, result in a monetary claim. The monetary claims, we do not know anything about because they are handled directly by our customers and carriers. We don't know about that.

Q. But you would still have the question of the handling of this freight en route, even though this merger would be  
564 approved, would you not?

A. What is that?

Q. The handling of this freight en route. In other words—

A. You would unquestionably have some handling en route. My point was that based on my observation of the tonnage of both of these lines, Barnwell and Horton—I am talking about their northbound lines now—there would be adequate tonnage for a solid trailer load on most days between the two. Now, if it were possible to load the quantities destined for both of those lines in one trailer, then it would not be necessary to transfer that trailer en route, and it seems to me only common sense to think that some handling would be eliminated, the handling at the consolidation point.

Q. As a matter of fact, Mr. Hester, you know that neither Horton nor Barnwell would take that trailer of yours, which you had loaded, destined for New York, from the point of origin direct to New York? You know that that is so?

A. No; I don't know that. As a matter of fact, I would think it is quite the contrary.

Q. Do you know that the matter of hours of service—

A. I am not considering that. I am considering the trailer, not the tractor. You see, the trailer is the freight car portion. The tractor may be changed a good many times en route, just like

the change on a freight train; but I am talking about the trailer part that we load.

565 Q. Now, in the event that you are not able to completely load that trailer, even under this arrangement, if it should be approved—

A. Yes.

Q. —there still would be the necessity of stopping at Burlington or Greensboro or some other point en route for the purpose of filling out that load in that trailer.

A. That would be up to the carrier, as to whether he wanted to. I think it would depend largely on how much the load lacked of being full, and whether he was willing to take it through without supplementary loading, or whether he would have to stop it at an intermediate point for loading. That is an operating point. I don't know that.

Q. Now, tell us, Mr. Hester, whether those employees who load those trailers are directly on your pay roll.

A. Who load the trailers?

Q. Yes, sir; at your plant.

A. Those are the truckers' employees. Now, occasionally, we will help in the loadings. Those trailers are on the motor carriers'—

Q. Then, do I understand that all of these companies that you have enumerated have their employees on your platform?

A. They have. Their employees help and supervise. Now, let me explain it this way: We are cooperative beyond the  
566 point of most shippers. We help load trailers in the majority of instances, even though we are not obligated to do it. We do that with the idea of expediting the freight for the benefit of our customers. In other words, we use what we consider common sense and the most expeditious method of getting the freight moving, and we try to be cooperative with the carriers—all of them.

Q. Could you tell us about what time of day your shipments are ready for transportation?

A. At varying times. Our shipments are ready for transportation, some of them, from the time we start our plant, from the time we start our shipping department, at 7 in the morning, until 5 in the afternoon. They come through at varying times.

Q. What about the latest hour?

A. The latest hour?

Q. Yes, sir.

A. Well, that would depend largely upon the urgency of the shipment. Ordinarily, the latest hour would probably be 4 in the afternoon. Sometimes we would get a shipment ready as late

as 5 or 6. It all depends upon the urgency of it, how badly we think our customer needs it.

Q. What time of day, generally, does your shipping department close?

A. Does our shipping department close?

Q. Yes.

567 A. As a rule, around 5 o'clock, but that is not set at all.

I mean, that is the time we try to.

Q. The general practice.

A. The general practice.

Q. Five o'clock.

A. That is what we try to adhere to.

Q. If those shipments left your plant at 5 o'clock, would it be possible under your present arrangement for a one-day delivery in New York?

A. Not on the cottons. We have within the past week instituted a new system, an experimental system, whereby they depart at around 3 o'clock. That is on rayons. It is difficult to draw this picture for you, but we have two contiguous plants, one handling rayons and one handling cottons. Their problems are different; their methods of operation are different; their customers are different, and when I say "5," I am speaking of the cottons. On the rayons we have instituted a system in the past week whereby they depart at 3, and we are determining the time at which those shipments can be delivered to New York City, with a transfer en route, which I understand Horton does at Greensboro and Barnwell at Burlington, but it is purely an accident—

Q. About what time does the merchandise that leaves your plant at 3 o'clock reach New York?

A. We hope—we don't know yet—we hope it is going to  
568 be able or possible to deliver that to the customer by noon the next day.

Q. Of the next day?

A. But that is purely speculation, and we don't know that that is possible yet.

Q. About what time is it arriving there now, since you put this new system into effect?

A. I understand it has been arriving there early in the morning—about 8:30 in the morning.

Q. That is, of the next day.

A. Of the second morning.

Q. Of the second morning?

A. Yes.

Q. So that even though you have arranged to get this merchandise out of your plant and on its way—

A. Let me qualify that. When I say "the next morning," the carriers have explained to me that it actually gets in there during the night, but it is possible to make delivery the next morning. In other words, it gets there too late for any possible use the same day, and they explained to me a condition with which I am not entirely familiar in New York City. It is the congestion around Seventh Avenue district for truck unloading. I don't know much about that.

Q. But does Horton go directly into New York, or does he stop at Paterson, N. J.?

569 A. I don't know that, but I know we have changed and experimented constantly in an effort to speed up the service to our customers and get the merchandise there quicker than it would otherwise be possible to do it.

Q. Do you know if either Horton or Barnwell uses the same type or the same truck to effect delivery in the metropolitan district of New York as was used to transport that merchandise from North Carolina to New York?

A. Do I know that?

Q. Yes, sir.

A. I don't know that; I don't know that. That is an operating condition, and I must say again that I am not familiar with it, and I am not qualified to answer.

Q. With reference to the routing of orders which you testified to, there are, of course, times when the officials of your company can use their influence with the consignee as to the method of routing a particular shipment, or with officials.

A. That is problematical. I would not say that. That is not our practice. We do not do that.

Q. But it is possible, though.

A. I wouldn't say it is possible, even. I wouldn't say it is possible, because we don't own the goods. They belong to our customers; we don't own them. I don't know that our influence would have any weight. I don't know that, even.

Q. But you do have an interest in your goods reaching  
570 the consignee in good condition and on time.

A. In good condition and on time, because he is our customer, whom we are striving to please.

Q. That being so, you would also have a very vital interest in the mode of transportation that would be used for the purpose of delivering that merchandise in that condition?

A. That is true, but we would leave that entirely up to the customer's judgment.

Q. Could you tell us the approximate number of employees of the various trucking lines to which you have testified that are on your platform?

A. I could not. I am not that close to the physical operations of the shipping. My function is not that close to the actual physical operation.

Q. Would you be able to get that information for us?

A. I don't think I could get that. I don't think I could get that.

Mr. O'BRIEN. That is all.

Exam. BAKER. Are there any further questions of this witness?

Mr. COCHRAN. That is all.

Exam. BAKER. The witness is excused.

(Witness excused.)

Exam. BAKER. Call your next witness.

Mr. JOSELOFF. Mr. Hoey, will you take the stand, please.

571 JOHN V. HOEY, being first duly sworn, testified as follows:

Direct examination by Mr. JOSELOFF:

Q. Give the Reporter your name and address, Mr. Hoey.

A. John V. Hoey, Room 1303, 40 Worth Street, New York City.

Q. What is your occupation, Mr. Hoey?

A. I am manager of the traffic department, Textile Fabrics Association.

Q. And as such are you in a position to know of their shipping and traffic problems?

A. We are.

Q. In addition to your representation of the Textile Fabrics Association, do you represent any other companies?

A. Yes; we represent some finishing plants and gray mills or cotton mills, as they are commonly referred to.

Q. Will you tell us, please, about the Textile Fabrics Association.

A. Well, the Textile Fabrics Association consists of approximately 125 houses in the converting business; that is, the converting of cotton, mixed cotton, and rayon, or all rayon fibers, into a salable product.

Q. Could you also give us some idea of the companies that you also represent in shipping problems, besides that of the Textile Fabrics Association?

572 A. Yes. South Bridge Finishing Company, South Bridge, Mass.; Sturbridge Finishing Company, Sturbridge, Mass.; Windsor Print Cloths, North Adams, Mass.; Pontiac Bleachery, Pontiac, R. I.; Fruit-of-the-Loom, Inc., New York City; Standard

Bleachery, Carlton Hill, N. J.; Merrimac Manufacturing Company, Lowell, Mass.; Merrimac Manufacturing Company, Huntsville, Ala.; Border Mills, Kingsbury, Tenn.; Consolidated Textile Company, Lynchburg, Va.; Consolidated Textile, Shelby, N. C.; Millville Manufacturing Company, Millville, N. J.; Martin Dyeing & Finishing Company, Bridgeton, N. J.; A. D. Juilliard & Company, 40 West Fortieth Street—that is their main office, and they have a warehouse at 600 West Forty-fifth Street, and they have cotton mills at Aragon, Ga., Rome, Ga.; Brookford, N. C., and New York Mills in New York, and Woolen Mills at Stottville, N. Y., and Providence, R. I., and silk mills at Chadwicks, N. Y., and Phillipsburg, N. J.

Q. Now, I believe you said that in your capacity you are acquainted with and connected with shipping and traffic problems?

A. That is right.

Q. Of the members of the Association, such as these other companies that you have mentioned.

A. That is correct.

Q. Can you give us some tonnage statistics with reference to the tonnage moving by motor carrier of these people whom  
573 you represent?

A. Well, our movement from southern mills to the eastern finishing plants, finishing plants located in New England and in so-called Trunk Line territory, last year approximated 500,000,000 pounds.

Q. What does that consist of?

A. That consisted principally of print cloth and sheetings.

Q. That was your movement by motor truck last year; is that correct?

A. That is right.

Q. In addition to that movement from the South to New England points, can you give us some tonnage statistics from New England points to the reverse direction?

A. From New England cotton mills to bleacheries located outside New England, in so-called Trunk Line territory—

Exam. BAKER. Will you define Trunk Line territory? What territory is that?

The WITNESS. I mean the territory—coming from New England, I mean the territory west of the Hudson River.

Exam. BAKER. In New York State?

The WITNESS. I should say New Jersey, Delaware, and Pennsylvania, and the Utica district of New York State. There are a few finishing plants up there. From New England gray mills or New England cotton mills to finishing plants in those States, 20,000,000 pounds.

574

By Mr. JOSELOFF:

Q. And what material, principally?

A. Unfinished cotton piece goods.

Q. Now, do you have another territorial movement and some tonnage figures on that from New England to finishing centers or manufacturing centers?

A. There is a movement of finished cotton piece goods from New Jersey, Pennsylvania, and Delaware to New York, Philadelphia, and Baltimore, and manufacturing centers in New England and New York State, which amounts to about 10,000,000 pounds.

Q. For the record, these movements are all by motor truck?

A. That is right.

Q. Is there another movement from New England to New York, Philadelphia, Baltimore, and other manufacturing centers of the same material?

A. Finished cotton piece goods from the New England finishing plants to New York, Philadelphia, Baltimore, and New York State manufacturing and distributing centers, 20,000,000 pounds.

EXAM. BAKER. These statements indicate pounds per year?

The WITNESS. That would be for the year 1940.

MR. O'BRIEN. Including what months?

The WITNESS. The whole year of 1940.

By Mr. JOSELOFF:

Q. Now, Mr. Hoey, are you familiar with the general nature of the application in this proceeding?

A. I am.

575 Q. Have you had occasion to study a copy of the map indicating the principal routes of the carriers involved, and the carriers involved?

A. No, sir; I have not studied the map, but I have a general idea of the routes that are covered by each of the carriers involved in the merger.

Q. I will ask you to look at the map, which is affixed to the bulletin board directly ahead of you, and which is an exact replica of the map on file in this proceeding, and ask you if, from what you understand of this application, that map represents the territory involved and contains the lists of the carriers?

A. I believe it does.

Q. Have you discussed the general nature and plan of the proposed unification with representatives of the carriers involved?

A. Only in a general way. When that matter came up we inquired of them concerning it, and we have had a general idea as to just what it is all about.

Q. You talked with officials, let us say, of Consolidated Motor Lines, in connection with this proposed application?

A. I have.

Q. So that from your conversations and from your observations and from your general knowledge, would you say that you are well acquainted with what is proposed here in this proceeding?

576 A. I think we are.

Q. Now, as to the tonnage which you testified moved by motor truck, will you state, if you can, in a general way, first, whether a substantial portion of that tonnage moves by carriers in this proposed unification?

A. Yes; some of it moves by those carriers.

Q. And I suppose the rest of the tonnage moves by carriers not in this application?

A. The remainder moves by competing routes. I have no division of that, incidentally, as to the business that moves by any specific route. This is the group tonnage, but we have a list of some of the carriers which we use in other territories, and I feel reasonably sure that with this combination there would still remain plenty of competition.

Q. Would you please read for the record a list of the carriers with which the members of the Textile Fabrics Association and/or these other companies mentioned by you, do business?

A. Well, between points within the South, that is, in the States of North Carolina, South Carolina, Tennessee, Georgia, Alabama, we use the North Alabama Motor Express, Inc., the Lowther Trucking Company—do you want the addresses?

Exam. BAKER. I think it would be well to give their headquarters, if you have that information.

A. The North Alabama Motor Express, Inc., Birmingham, Ala.; Lowther Trucking Company, Charlotte, N. C.; Lewis  
577 & Holmes Motor Freight Corporation, High Point, N. C.;  
New South Express Lines, Inc.; Columbia, S. C.; E. L. Long Motor Lines, Inc., Greenwood, S. C.; Efrom Trucking Company, Inc.; Aiken, S. C.; Atlantic States Motor Lines, High Point, N. C.; Palmetto Motor Lines, Hartsville, S. C.; A. B. & C. Truck Lines, Rome, Ga.; A. A. Highway Express, Inc., Atlanta, Ga.; Alabama Highway Express, Birmingham, Ala.; Deaton Truck Lines, Inc., Birmingham, Ala.; East Tennessee & Western North Carolina Motor Transportation Company, Johnson City, Tenn.

Then, from the South to the East, that is on goods originating in North Carolina, South Carolina, Tennessee, Georgia, or Alabama, consigned to destinations, Wilmington, Del., and north, we use the following lines: Akers Motor Lines, Inc., Gastonia, N. C.; Harris Brothers Transfer Company—I believe they are at Charlotte; I am not sure of that; Mason & Dixon Lines, Inc., Kingsbury, Tenn.; Cooper Motor Express, Inc., Columbia, S. C.; Ross

Motor Lines—I haven't that address; Davis Motor Lines—I don't know that address; Atlantic States Motor Lines, High Point, N. C.; Carolina Freight Carriers Corporation, Cherryville, N. C.; G. & M. Motor Lines—I believe they are at Fayetteville, though I am not sure; Hucklebee Motor Service, Columbia, S. C.; McLean Trucking Company, Fayetteville, N. C.; the Brooks Transportation Company, Richmond, Va.; Jack Cole, Inc., Birmingham, Ala.; Miller Motor Express, Charlotte, N. C.

578 Within the New England territory, covering the movements between Maine and New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut: Hemingway Brothers Interstate Trucking Company, New Bedford, Mass.; the Miltex Transit Company, Fall River, Mass.; Alger Brothers, Somerville, Mass.; Holmes Motor Express, Worcester, Mass.; Moshassuck Transportation, Saylesville, R. I.; McCarthy Express, Lawrence, Mass.——

Q. Incidentally, that is not the same as the McCarthy Freight System, one of the carriers in this application?

A. That is correct.

New England Transportation Company, E. N. Curtis, Danielson, Conn. I believe the New England Transportation Company's address is South Station, Boston, Mass. B. & M. Transportation Company, North Station, Boston, Mass.; H. P. Welch, Somerville, Mass.; Gay's Express, White River Junction, Vt.; Huckins & Co., Boston; Keogh Storage Company, Boston, Mass.

Then, our business moving from finishing plants in Rhode Island, Massachusetts, and Connecticut into New York State, in the metropolitan area thereof, we use the following:

Lowell Trucking Company, Lowell, Mass.; Hemingway Brothers Interstate Trucking Company, New Bedford; Savins Motor Express, New London, Conn.; Moskowitz Motor Lines, Jewett City, Conn.; M. & M. Transportation Co., Boston, Mass.; Seaboard Freight Lines—I am not sure of their address;

579 Wooster Express, Hartford, Conn.; Palmer Motor Lines, Great Barrington, Mass.; Kimball Motor Express, Great Barrington, Mass.; Holmes Motor Express, Worcester; The Emmott Valley Transportation Company, Usbridge, Mass., and the New England Transportation Company.

Then, we have movements from the South to the West——

Q. When you say "from the South to the West"——

A. Well, shipments originating in North Carolina, South Carolina, Georgia, Tennessee, and Alabama, going into Buffalo, Pittsburgh, Cleveland, and so forth.

Q. Well, you might name those carriers that you use.

A. There are four of those: The Blue & Gray Transportation, Cincinnati; the Carolina Motor Express Lines of Indianapolis;

The Silver Fleet Motor Express of Louisville, Ky., and the Huber & Huber Motor Express, Inc., at Louisville.

Then, the movement from New York City points into New Jersey, Delaware, Pennsylvania, up into New York State, there is still another group of carriers.

Q. I would like to have you make a general statement for the record as to those carriers, and I think that will be sufficient.

A. We use principally or practically all of the larger carriers operating in that territory.

Q. Now, Mr. Hoey, in your opinion, would the granting by the Commission of this application be beneficial to the various companies which you represent and to the members of the  
580 Textile Fabrics Association?

A. I think the consolidation would be beneficial, generally speaking, to everybody.

Q. Whom do you mean by "everybody"?

A. I mean the people I represent.

Q. Will you give your reasons therefor?

A. I believe that economies would result from the following: Uniform through billing, consolidation of the solicitation of freight, consolidation of insurance purchases, reduction in the number of terminals, and the cost of rentals, more efficient and economical operation of terminals, more efficient interchange of freight at New York and elsewhere; reduction in cost to shippers or receivers performing their own dray service between plants and terminals, reduction in empty truck-miles, more efficient and economical maintenance, direct communication between all terminals, improved pick-up and delivery service, and less congestion at industry loading and unloading platforms.

I think all of these economies will have a tendency to arrest increased costs, expedited service, and stabilized rates, with a possibility of reducing them.

Q. In your opinion, would it benefit the public generally as well as the members of the Association that you represent?

A. I think so.

Q. What is your opinion as to the effect of this proposed  
581 consolidation on competing carriers, and, in particular, the effect on the movement of freight by those carriers which you mentioned in your testimony?

A. Well, I think if this consolidation be approved in line with the application, it would not harm competition; in other words, there is plenty of competition outside of this group.

Q. Would there result any substantial diversion of traffic from carriers not in the proposed unification to carriers in the proposed unification?

A. I do not think you can forecast that. Nobody knows what transporation among shippers one single individual will purchase. He may be using one line today and for some reason or other switch to some other line tomorrow. I do not think there is any fixed rule that you could go by on that.

Q. Now, from your standpoint as a shipper's representative, what is your feeling and opinion as to your testifying here and requesting the approval by the Interstate Commerce Commission?

A. Well, personally I feel that there are too many trucking companies, and the sooner they are consolidated and merged the sooner we will have stronger companies, and in that effort you do a lot of things. In a small office like mine, where there are only four of us, we at times, for example, find it difficult to interview

solicitors on a given date. We encourage solicitation; we like to hear what the solicitors like to say and therefore we see all solicitors that come to see us, but we find it rather difficult at times to see them all; whereas, if there was a substantial amount of consolidation I am sure that that would be considerably reduced, or at least it would be made comparable to rail solicitation, where a single solicitor will solicit business, we will say, for a given route that might involve four or five individual lines, such as the Southern Railway representative might come to our office and solicit business from, we will say, South Bridge, Mass., to Birmingham, Ala., and he will solicit that by the Merchants & Miners Transportation Company and Southern Railway, or by a competing railroad. In that way he saves a trip into our office for the other two or three solicitors involved in the route. In that respect, I think it will be helpful to the shippers.

Then, too, in a good many of our plants, as Mr. Hester said, we were originally rigged up to ship by rail, and we find that with the increase in motor truck tonnage some of our shipping platforms are congested and not ample to take care of the amount of tonnage that is at times offered, which causes some congestion in our shipping rooms, and so forth.

Mr. JOSELOFF. That is all with this witness.

Exam. BAKER. Is here any cross-examination?

Mr. WIPRUD. I have a few questions, Mr. Examiner.

583 Cross-examination by Mr. WIPRUD:

Q. I take it from your testimony, Mr. Hoey, that you are in favor of further unification of truck carriers similar to the one proposed in the pending application?

A. That is right.

Q. And you believe that as a result of this unification certain sayings will be effected over the existing situation, insofar as independent motor lines are concerned?

A. Well, I think certain savings will be realized. I think that is obvious, from all consolidations:

Q. And to the extent that those savings will be effected, the independent truck lines might be put to a disadvantage in continuing in business?

A. I don't think so.

Q. Do you think they would be on as favorable a basis in meeting competition between such areas as you have described in your testimony, as the unified line?

A. I think they would be on the same basis as they are on today. If one carrier gives service, and somebody chooses to meet it, they will meet it. If they cannot, they just don't meet it.

Q. Well, is there—

A. I don't think there is any yardstick by which you can measure that. I believe that competition, good sound competition, takes care of that automatically.

Q. Well, in the event that this application is approved, 584 will there be any other truck operator of comparable size on the Atlantic Seaboard?

A. I don't think so.

Q. Will there be any other motor carrier operating between New York City and New Orleans?

A. Yes; there are other carriers.

Q. Well, a single carrier.

A. Yes; an individual carrier.

Q. What is that carrier?

A. I don't recall his name. He is in Paterson, N. J.

Q. Is he a common or contract carrier?

A. Common carrier.

Q. Can you state that name for the record?

A. I think I can.

Q. You testified, Mr. Hoey, that you are familiar with the application in this proceeding.

A. Generally.

Q. Well, taking the New England territory, insofar as the motor truck operations are concerned, of the carriers involved in this particular proceeding, the McCarthy system operates almost entirely in Massachusetts, Connecticut, and Rhode Island; does it not?

A. Correct.

Q. And these operations are duplicated by the operations of the eastern division of Consolidated; is not that so?

585 A. I think that is right.

Q. State, if you know, whether substantial competition may exist between those lines today.

A. I believe there is.

Q. And it would follow, would it not, if this application is approved, that this competition will be eliminated.

A. I think that would depend on how this merger is set up. I understand that each one of these companies is going to operate independently. I don't think it has been announced yet just what the plan will be concerning the solicitation of business; so it would be hard for me to say just what they might do.

Exam. BAKER. We might save time, Mr. Wiprud, if I said this: I think counsel for the applicant will concede that any competition between the companies involved in this unification will be eliminated.

Mr. JOSELOFF. Yes, of course, we concede that.

By Mr. WIPRUD:

Q. It is also conceded that there is substantial competition between the carriers involved in this unification.

A. That is right.

Mr. JOSELOFF. Just a minute, Mr. Hoey.

Exam. BAKER. Counsel will have to do the conceding.

Mr. JOSELOFF. We do not concede that.

Mr. WIPRUD. I would like to have it from this witness.

586 Mr. JOSELOFF. You go ahead and develop it, but I do not want it understood for the record that we are conceding anything like this last statement.

Exam. BAKER. Was your last question answered? Mr. Reporter, will you read Mr. Wiprud's last question?

(Question read.)

Exam. BAKER. I think you should rephrase your question, Mr. Wiprud.

By Mr. WIPRUD:

Q. Referring to the western operations of Consolidated, Mr. Hoey, will you state whether or not the routes of Moran duplicate practically all of Consolidated's routes in this area?

A. From Albany north, I think they do.

Q. Is there substantial competition between these carriers?

A. I imagine so.

Q. And in the event that this unification is approved, and these routes are merged into one operation, it follows that this competition would be eliminated; does it not?

A. Yes, sir.

Q. Moving down to the middle area as shown on the map, which is a part of the application, Moran and Consolidated operate between Binghamton, New York, and Philadelphia, do they not?

A. I think that is right.

Q. Is there substantial competition between these carriers between these points?

587 A. I imagine so. I am not sure about it.

Mr. JOSELOFF. Well, if you are not sure, Mr. Hoey, just say so.

By Mr. WIPRUD:

Q. Referring again to the map, Moran and Consolidated, and Consolidated and McCarthy have competing lines, have they not, from points north into New York City?

A. From points north into New York City?

Q. That is right.

Mr. JOSELOFF. Did you say McCarthy, Mr. Wiprud?

Mr. WIPRUD. Taking Moran and Consolidated.

A. Yes; they have.

By Mr. WIPRUD:

Q. And is there substantial competition between these two lines on those routes?

A. I don't know. I don't think I could testify as to the competition between them.

Q. You ship over these lines, do you not?

A. Yes.

Q. Or your clients do;

A. Yes.

Q. You would know, would you not, whether or not there is competition for this business.

A. Well, yes; but that extended beyond the eastern carriers in that operating area.

Q. You do business with both of these carriers?

588 A. That is right; and we do business with a lot of other carriers in the same territory.

Q. They compete for your business.

A. That is right.

Q. Looking at the map again, Mr. Hoey, from New York to Philadelphia, Consolidated competes with the Horton Motor Lines, Southeastern Motor Lines, and Barnwell Motor Lines; do they not?

A. According to this, they do.

Q. I beg your pardon?

A. They do, according to this.

Exam. BAKER. Do you know, Mr. Hoey?

The WITNESS. No, I don't know; I don't know. I know we are not solicited by Barnwell or Horton for New York to Philadelphia business.

Exam. BAKER. I think that is the answer. Mr. Wiprud wants an answer of your own personal knowledge.

The WITNESS. No; we don't know that.

By Mr. WIPRUD:

Q. Does the map show competing operations between Philadelphia and Washington via Baltimore, insofar as the lines involved in this application are concerned?

A. That is right.

Q. Those lines are Southeastern, Horton, and Barnwell?

A. That is right.

Q. Do you know whether or not they are competing lines?

Mr. JOSELOFF. I think that question is the same as the 589 previous one. Is it not? This witness testified that he does not know just what their rates are.

Exam. BAKER. If he knows.

A. I would say they are competing lines, although I do not know that either one of these three carriers solicit Baltimore or Washington business out of Philadelphia. We would certainly not think of any connection with a movement like that.

By Mr. WIPRUD:

Q. Taking the movement from the South to Washington and to New York, first via Lynchburg, is there any competition between any of the lines involved in this application?

A. Yes.

Q. What are they?

A. Horton Motor Lines and Southeastern—now, wait a minute—Barnwell Brothers.

Q. How about the movement through other gateways from this origin territory to the New York area? Take, for instance, via Richmond.

A. You get Horton, Barnwell—that is all it shows on here.

Q. How about via Winchester?

Mr. JOSELOFF. Does not the record speak for itself, Mr. Examiner? I have no objection to these questions, but I think the operating rights of all the companies are in the record. The witness has testified as to their territories, and the map is also self-explanatory. I think this is a petition.

590 Exam. BAKER. I think we can save time, Mr. Wiprud, if you will confine your questions to developing the witness' knowledge of the competition rather than referring the witness to the map, which is in the record and speaks for itself.

By Mr. WIPRUD:

Q. Well, from your experience, representing the clients that you have enumerated, do you know whether or not there is competition from the South via the gateways which you have mentioned into the New York area?

A. Yes; there is.

Q. As I understand your testimony, Mr. Hoey, you are in favor of further unification—

A. Yes, sir.

Q. Similar to that proposed here?

A. Yes, sir.

Mr. WIPRUD. That is all.

Exam. BAKER. Mr. Hoey, do you find that there is any tendency among shippers to divide their freight among competing lines that operate to the same destination points?

The WITNESS. I do not think there is any fixed rule for that. It depends upon the approach that the solicitor makes, the amount of information that is available from his company, and through him to the account that he is calling upon. There are many things that enter into that that we usually experience with a man and his company. I do not think anybody could state definitely that  
591 there is a fixed policy. I know in our office there is not.

Exam. BAKER. Those are all the questions I have. The witness is excused.

(Witness excused.)

Exam. BAKER. We will recess for 15 minutes.

(There was a short recess taken.)

Exam. BAKER. Come to order, please.

Mr. JOSELOFF. Mr. Faivre, will you take the stand, please.

H. A. FAIVRE, being first duly sworn, testified as follows:

Direct examination by Mr. JOSELOFF:

Q. Will you give your name and address to the Reporter, please?

A. H. A. Faivre, traffic manager, North American Rayon Corporation and American-Bemberg Corporation, Elizabethton, Tenn.

Q. Where is the location of the North American Rayon Corporation?

A. At Port Rayon, Tenn.; also the American-Bemberg Corporation, both plants manufacturing rayon yarns.

Q. Do you represent any other plants besides those two plants, Mr. Faivre?

A. No, sir.

592 Q. I will ask you whether you are testifying in reference to this application with the knowledge, approval, and consent of the officials of these companies.

A. Yes, sir.

Q. To what territories do these companies ship, principally?

A. To Eastern Trunk Line, New England, and Southern territories.

Exam. BAKER. What is the Eastern Trunk Line territory?

The WITNESS. That comprises the States of Delaware, Maryland, Pennsylvania, New York, New Jersey, Virginia, and West Virginia.

Exam. BAKER. Will you please speak up so that all of these gentlemen can hear you.

Mr. JOSELOFF. I would suggest, Mr. Faivre, that you face the counsel table a little more directly. It might be a little easier for all counsel to get your testimony, then.

The WITNESS. All right.

By Mr. JOSELOFF:

Q. Now, from what territories do you receive shipments?

A. From the same territories, and, in addition, the Central Freight Association territory.

Q. And what territory is that?

A. That is the territory embracing the States of Ohio, Indiana, Michigan, and Illinois.

593 Q. Do you have some figures as to how much tonnage is shipped by motor truck per year within the territories comprised by this application?

A. Both companies ship by motor truck approximately 40 to 50 million pounds annually.

Q. That is outbound shipments?

A. That is outbound shipments.

Q. And of that how much would go into New England?

A. About 35 percent, I would say.

Q. About 35 percent?

A. Yes.

Q. That will be roughly about 15 million pounds, would you say?

A. Yes; about 15 million pounds.

Q. And about how much would go to the territory that you described as the Eastern Trunk Line territory?

A. Thirty-five percent.

Q. About the same amount?

A. That is right.

Q. Now, on your inbound tonnage, how much is received by these two plants in a year?

A. From the territories—

Q. From the territories involved in this application; yes, sir.

A. From five to ten million pounds annually.

Q. And of that inbound tonnage, what percentage would come from New England?

594 A. Possibly 10 percent.

Exam. BAKER. Is the five to ten million pounds the amount that you received by motor carriers?

The WITNESS. By motor carriers; yes, sir.

By Mr. JOSELOFF:

Q. And what percentage would be received from the territory that you have described as the Eastern Trunk Line territory?

A. About 75.

Q. Seventy-five percent of that tonnage?

A. Seventy-five percent of that tonnage.

Q. And that would be by motor carrier?

A. Motor carrier; yes, sir.

Q. Do you ship substantial tonnages by the Southeastern Motor Freight?

A. Yes; the Southeastern Motor Line handles approximately 20 million pounds to us, and from us, inbound and outbound shipments, of which the other lines in the proposed unification handle about 50 percent.

Q. Then, how much would you do with other carriers than those in this proposed unification?

A. Approximately the same amount.

Q. Can you name for the record some of these other carriers that are not in this proposed unification with which your companies are doing business at the present time?

A. Mason & Dixon Lines, East Tennessee & Western  
595 North Carolina Motor Truck Transportation Company,  
Rutherford Freight Lines, Inc., Mundy Motor Lines, Emmott Valley Transportation Company, York Motor Express, Hemmingway Brothers, Richmond-Pittsburgh Lines, Inc., State Parcel Corporation, Rogers Motor Lines, Inc., Smith Transfer Company, Wilson Trucking Company, Newburgh Transfer & Storage Company, New Jersey Forwarding Company, Novick Transfer Company, Passaic Transfer & Terminal Company, Jones Motor Company, Saul Trucking Corporation, New South Express, Amsterdam Express, Goodman's New York & Connecticut Express Corporation, Georgia Motor Express, Estes Freight Lines, and Inter-City Trucking Company.

Q. To have a clear understanding, this, as I understand it from your testimony—and you correct me if I am wrong—these carriers that you mentioned serve the territory comprised by the present application; is that correct?

A. Yes, sir.

Exam. BAKER. Do all of those carriers operate direct to your plants, or some of them inter-line carriers?

The WITNESS. Not all of them do. As a matter of fact, only a few of them do—Mason & Dixon Lines, East Tennessee & Western North Carolina Motor Transportation Company, and Rutherford Freight Lines only.

By Mr. JOSELOFF:

Q. Any others?

A. No.

596 Q. Of the carriers in this proposed unification, state whether or not Southeastern Motor Lines is the only carrier operating directly into your plants?

A. It is.

Q. You have been here this morning, all morning, Mr. Faivre?

A. Yes, sir.

Q. And you have heard the testimony of other so-called shipper witnesses on behalf of the applicant in this case?

A. I have.

Q. Are you familiar with the general nature and plan of this proposed unification?

A. Yes, sir.

Q. What is the basis of your knowledge of what is proposed here?

A. Information obtained from the representatives of the Southeastern Motor Lines.

Q. And have you also gathered additional information from attendance at this hearing?

A. At this hearing also; yes, sir.

Q. In your opinion, would the granting of the proposed application by the Interstate Commerce Commission be of benefit to the concerns you represent?

A. Yes, sir.

Q. Will you give us your reasons for that statement?

597 A. Well, it would help by the elimination of transfers. Any plan lessening the rehandling of goods is beneficial to shippers from the standpoint of better service; perhaps fewer claims, less breakage, less tracing, and better control over tracing, and also in connection with the reconsignment or recall of shipments, it would tend to lessen delays on shipments con-

signed beyond the lines of the applicant, because of fewer transfers, which no doubt would aid in the holding and developing of markets in distant or new territories. Anything tended toward better service and insuring economical operation is welcome.

Q. Now, I am interested in your comments on the developing of markets. Do you mean from the standpoint of competing with other concerns and from the standpoint of extending present markets?

A. From the standpoint of competing with other rayon producers, particularly those located in, say, Pennsylvania, West Virginia, Virginia, and Maryland.

Q. What is the problem at the present time in regard to competition from other concerns?

A. Well, the principal markets of rayon yarn are New England and the Eastern Trunk Line territory, and you might say Official territory, and we are farther removed from the principal markets, naturally, and need very good service in order to compete with our principal competitors.

Q. You heard Mr. Hoey testify as to the number of  
598 concerns he represents in New England and the so-called Eastern Trunk Line territory.

A. Yes.

Q. And would those concerns be competitive with your concerns, or would some of them, at least, be competitive with the business of your concern?

A. I don't know that he is representing any of the rayon producers.

Q. I see, but at least the rayon concerns which you mentioned in this territory are competitive with your concerns.

A. You mean the rayon producers located in the South?

Q. I mean the rayon producers located in New England and Eastern Trunk Line territory are the ones you have in mind.

A. Yes.

Q. So far as competition is concerned.

A. Yes.

Q. Now, can you tell us what the present service is that you are receiving into New England?

A. Normally by truck, third morning or perhaps third day.

Q. Would that be increased if the shipments happen to arrive over the week end?

A. Yes. If they should arrive, particularly in New York, over the week end, I understand that they are not transferred because of the holidays or week end.

Q. What is your opinion as to the expediting of this  
599 service, particularly with reference to the time the shipments would take to go into New England?

A. Do you mean under this proposed unification?

Q. Under this proposed unification; yes.

A. Well, if through trailers were operated from our plants, or even Bristol, which is an interchange point—

Q. Is that Bristol, Va.?

A. Virginia-Tennessee—an interchange point with the E. T. & W. N. C. Motor Transportation Company—

Exam. BAKER. Let me interrupt you. Is your question directed to whether or not this unification would result in expediting the service?

Mr. JOSELOFF. My question was directed to the witness' opinion as to the time of delivery that would result if the proposed unification were to be approved by the Interstate Commerce Commission, between his plants in New England.

Exam. BAKER. Do you feel that this witness is qualified to answer that question? Is it not rather an operating situation?

Mr. JOSELOFF. I feel that it is, Mr. Examiner, but if the witness, from his knowledge of conditions, could testify as to that fact for the record, I would like it. However, I will withdraw my question now and lay a foundation for it, to see if the witness is, from his knowledge or experience, able to give me an answer to that question.

600 Exam. BAKER. Very well.

By Mr. JOSELOFF:

Q. Mr. Faivre, have you had some actual experience in the operation or transportation of freight?

A. Yes, sir; I was connected with the Norfolk & Western Railroad at one time, in the operating department.

Q. In the operating department?

A. Yes.

Q. Do you also, in your present capacity, have occasion to come into contact with operating problems of motor carriers?

A. No.

Q. Do you feel from your experience in the operating department of a railroad that you would be qualified to give your opinion as to the estimated time it would take on shipments from your plants to New England via the members of the proposed unification?

A. Yes; it seems to me it would be a simple matter to answer a question like that. Naturally, when you reduce transfers, you are going to expedite your deliveries—no question about that.

Q. Are you familiar with the general territory between your plants and New England, from a transportation standpoint?

A. Yes. I know what service we are getting today.

Q. Can you tell us what service, in your opinion, you would receive if the proposed unification were to be approved?

A. I think we would get to New York the second day, by the elimination of delay there at the New York terminals, of, 601 from, say, 12 to 24 hours. I might add in connection with the tracing of shipments to New England points, we have found out that shipments were delayed in New York.

Q. You found that as an instance of delay?

A. Yes.

Q. I was interested in your comments on less breakage. Do you have a peculiar problem of breakage, so far as your company is concerned?

A. Yes. We have a movement of glassware from Vineland, N. J.

Q. To where?

A. To Port Rayon, Tenn.

Q. Tell us something about that.

A. Well, I should say that at least 15 percent of the shipments we receive from Vineland, N. J., are damaged.

Q. Do you see a benefit that would result to your concern if the proposed unification were approved, so far as those shipments from Vineland are concerned?

A. It would depend altogether on whether or not it would lessen the transfers, the handling at terminal points. In the event that it would, it would be helpful in that direction.

Q. Mr. Faivre, in your opinion, would the proposed transaction, if approved, result in such a restriction of competition of other companies as to tend towards monopoly?

A. Because of so many truck routes available to us, and considering the fact that we have both rail, express, and freight 602 service, I am not convinced that the proposed transaction would restrict competition to such an extent as to tend toward monopoly. In other words, we would still have many other trucking concerns to transport our shipments besides those facilities in the proposed unification, which we would continue to use.

Mr. JOSELOFF. That is all.

Exam. BAKER. Cross-examine.

Cross-examination by Mr. WIPRED;

Q. I am not sure, Mr. Faivre, that I heard the first part of your testimony in some particulars. Is it correct to state that approx-

imately one-half of your business during the past year moved over Southeastern Lines?

A. No, no; not by a great deal—our outgoing shipments.

Q. That is, of your outbound tonnage, about 50 percent went over Southeastern Lines?

A. Our outgoing tonnage by truck.

Q. By truck.

A. That is right.

Q. In addition to the Southeastern Motor Lines, what other motor lines serve your plant?

A. I think I made that statement—Mason & Dixon Lines, Rutherford Freight Lines, and the East Tennessee & Western North Carolina Motor Transportation Company.

Q. I believe your statement was that the other half of  
603 your outbound tonnage moved over those lines?

A. Yes.

Q. That is, your motor truck outbound movement?

A. That is true.

Q. Are all of the other lines that you spoke of, which do not serve your plant, class I carriers, so-called?

A. They are common carriers.

Q. They are all common carriers?

A. They are all common carriers, and parties to the tariffs we use.

Q. Some of them are intermediate carriers; are they?

A. Some of them are.

Q. In speaking of the benefits which you anticipate would result from the proposed unification, is it your testimony that approximately one day will be saved in delivery to New England territory from your plants?

A. Yes; depending on conditions.

Q. Well, is that your testimony?

A. Yes; depending on conditions.

Q. And that benefit is to be effected through this unification?

A. That is right.

Q. You do not believe that that benefit could be effected unless the unification could be approved?

A. Oh, yes.

Q. Explain that.

604 A. These competing lines could do that, particularly if they are in a position to handle a trailer through from our plant to New England points.

Q. Well, if the competing lines could cut down that time one day, so could these so-called unified lines; could they not?

A. That is right.

Q. So, insofar as that benefit is concerned, it is not necessary to unify these lines in order to realize that saving in time?

A. No; it would depend altogether on whether the competing lines chose to operate trailers to New England points. In other words, it would depend altogether on whether they meet that competition by giving the same service.

Q. Do the trailers at the present time move all the way through from origin to destination territory?

A. They do not.

Q. Where are the points of interchange?

A. Well, in connection with the Southeastern, the interchange is made at Bristol, and connection with the Mason & Dixon is made at Kingsport and New York, or in some instances I think the interchange is made at Paterson, N. J., depending altogether on the line handling it north of the intermediate point.

Q. Well, Bristol is not the northern point of the Southeastern Lines; is it?

A. No. New York City is.

605 Q. So Southeastern is entitled to operate a trailer all the way through from origin to destination, insofar as your business is concerned; is it not?

A. To New York.

Q. But they do not do that.

Mr. JOSELOFF. The witness did not state that, Mr. Wiprud.

The WITNESS. No.

By Mr. WIPRUD:

Q. Do I understand your testimony correctly that the point of interchange was at Bristol?

A. It is.

Q. What do you mean by "interchange?"

A. Transferring from the initial line to either the Southeastern at Bristol or the Mason & Dixon at Kingsport.

Q. I was referring to the business that you move via the Southeastern Line, which is one of the initial lines, so far as your company is concerned.

A. That is right.

Q. Does it interchange at Bristol?

A. They wouldn't have to, if they would pick it up at our plants.

Q. Well, do they?

A. Sometimes.

Mr. JOSELOFF. Perhaps you could clear it up if you asked him at what points. In other words, we could interchange at Bristol from points south; but not to points like New York.

606 Mr. WIPRUD. I thought we were talking about business destined to New England.

THE WITNESS. Yes; we were talking about that, but let me make this clear, that they can and have called at our plant and picked up freight and taken it up to New York for interchange to connecting lines.

By MR. WIRUP:

Q. Well, insofar as the movement from your plants to New York is concerned, there is no need for unification in order to get through movement without an interchange.

A. That is right.

Q. Your competition is with the rayon producers in Pennsylvania, Maryland, and Virginia.

A. Yes, sir.

Q. And those producers are located, I take it, closer to the consuming areas.

A. That is right; to the principal consuming areas.

Q. And you believe that this unification, if I understand your testimony correctly, would place you in a better position to compete with these producers.

A. Yes, sir.

Q. Will you explain in what way?

A. Because they have overnight service there, and we do not.

Q. Would the rates have anything to do with it?

A. Not a thing in the world.

Q. Will you explain that, too?

607 A. Well, of course, naturally, the rates would have something to do with it. I will correct that. The rates would have nothing in the world to do with it. It is all done on a delivered basis.

Q. On a delivered basis?

A. Yes, sir. Naturally, it would cost us more to deliver it than those particular producers.

Q. Do you anticipate as one of the advantages of this unification, that you will obtain lower rates?

A. No, sir.

Q. Now, Mr. Faivre, if through this unification it is possible to reduce the operating schedule by one day of 24 hours—

A. Twelve to twenty-four hours.

Q. Twelve to twenty-four hours, and it is not possible to do it under existing conditions, what, in your opinion, would be the effect upon competition?

A. Will you please restate that.

MR. WIRUP. Will you read that question, Mr. Reporter?

(Question read.)

THE WITNESS. I don't quite understand what you are trying to get at.

By Mr. WIPRUD:

Q. Well, if you could ship over the unified lines at a saving of from 12 to 24 hours, would you be inclined to turn more of your traffic over to the unified lines than you do to these competing lines that you have listed?

608 A. Not necessarily.

Q. Will you explain that statement.

A. Well, it would depend altogether on the conditions on the day that the shipments were to be made.

Q. Well, would the tendency be to turn more of the business over to the line that would get your goods there the quickest?

A. No; because under our traffic policy we divide the traffic between several different routes that we have selected, and in all probability we would continue to do so.

Q. Regardless of the saving in time?

A. Regardless of the saving in time.

Q. So that saving in time is no particular consideration?

A. No, no; it is not.

Mr. WIPRUD. That is all.

Mr. JOSELOFF. I would like to ask the witness a couple of further questions.

Redirect examination by Mr. JOSELOFF:

Q. Well, the saving of time would be a consideration, would it not, where you had to compete with other competitors in connection with the products—

A. I think I have already covered that.

Q. I do not think you understood Mr. Wiprud's last question when he said that the saving of time would be of no concern to you.

608 A. It would, in so far as meeting competition of our competitors, naturally.

Q. I did not think you understood the question, and that is why I wanted to clear it for the record.

A. That is the point I have been trying to make—

Exam. BAKER. Just a moment. Just answer the question. Is there any question of the witness now?

Mr. JOSELOFF. I have one more question, if I may ask it.

By Mr. JOSELOFF:

Q. In answer to a previous question by Mr. Wiprud, you said that, in your opinion, the proposed unification, if approved by the Commission, would not result in lower rates. I wonder if you will explain what you meant by that.

A. Well, I don't anticipate at the present time that there would, but I can't look at the future. I don't know what is going to transpire after this proposition is approved.

Q. Well, what tendency would it have, insofar as rates are concerned, in your opinion?

A. Well, on account of lower operating costs, I should say the lines represented would be in a better position to lower rates, perhaps, than the other lines.

Q. Would it have any effect on the stabilization of rates, in any event, in your opinion?

A. I have always understood that—I imagine these lines involved will continue to be represented in the various rate conferences, and they control the situation, but I do not see how they can force rates down.

610 Mr. JOSELOFF. That is all I have. That is all. Thank you.

Mr. WIPRUD. May I ask just one further question.

Re-cross-examination by Mr. WIPRUD:

Q. You were speaking about rate conferences—

A. Excuse me a minute—without the consent of the lines not involved in this, I do not see how they could. They cannot under the present set-up.

Q. In other words, do these rate conferences meet for the purpose of determining what rates are to be in a given area?

Exam. BAKER. Well, I do not think we will go into that, Mr. Wiprud. It is not relevant to this proceeding.

Mr. WIPRUD. I will withdraw the question.

By Mr. WIPRUD:

Q. Mr. Faivre, just to clear up this point, you testified, I believe, that to the extent that it was necessary for you to meet competition of the rayon producers in the areas that you mentioned, in Pennsylvania and Maryland and Virginia, the time element is a matter of consideration to the extent that it is necessary for you to meet that competition, and you would be inclined, would you not, to use the service of a carrier that could give you the shortest time in transporting the products of your mills to the consuming centers?

A. Normally, that is true.

Q. Yes; and to that extent, then, tonnage would be taken  
611 away from the independent lines in order that you could meet your own competition?

A. What do you mean by "meet our own competition"?

Q. The competition on this business.

A. What?

Q. The competition on this business.

A. You mean so far as service is concerned?

Q. Yes.

A. By our competitors?

Q. Of your competitors—the tendency would be to use the line that you could get your products to the destinations in the shortest possible time.

A. Naturally.

Q. Yes; and to that extent, then, the independent motor carriers that remained would be at a disadvantage; is not that correct?

A. Well, no. No; they have an opportunity to meet this rate.

Q. Then, the service could be met without this unification?

A. Well, it possibly could be met by another unification, too.

Q. Well, it could be met without the unification.

A. Well, that would depend altogether on the conditions at the time.

Q. Well, could it be done, Mr. Faivre?

A. Possibly so; but the only way I could see how they could do it into New England territory—and that is what we are speaking about now—would be the operation of trailers from our mills to ultimate destination in New England.

Q. Such as Southeastern now has from your mills to New York?

A. That is right.

Mr. WIPACD. That is all.

By Mr. O'BRIEN:

Q. Mr. Faivre, I am interested in this glass movement from Vineland, N. J. Could you give us the names of the companies that you use in that movement?

A. That is Saul Trucking Company, Southeastern, and E. T. & W. N. C. Motor Transportation Company.

Q. As I understand your testimony, you said there was approximately 50 percent damage in the movement of that glass; is that correct?

A. You misunderstood me; it was 15 percent.

Q. Fifteen percent?

A. Yes.

Q. I understood you to say 50, and I thought it was excessive. Now, would you say that that 15 percent damage was the result of the transferring of that merchandise from one truck to another, or would you say that it was the result of packing in the factory at Vineland?

A. I would say that it was the result of transferring from one trucking line to the other.

Q. Have you examined some of these shipments?

A. Yes, sir; the shipments are very well packed—very well  
613 packed.

Q. Now, could you tell us something about this delay at New York and its cause?

A. And its cause?

Q. Cause.

A. Well, I can't answer that in all respects. Some shipments that we traced we found were delayed in New York, because at the time they would get in there it would be too late to make transfer, and they would have to hold it there until the next day.

Q. That does not happen to be the reason, of course, in all cases, does it?

A. Well, I can't answer that.

Q. Well, so far as your investigation is concerned.

A. So far as our investigation is concerned, it was due to that fact; yes.

Q. That would not be caused as the result of faulty equipment or the lack of labor; would it?

A. I can't answer that.

Q. Now, with reference to the reconsignment or recall of shipments, to which you testified, could you elaborate on that a little bit, as to just what you meant by that?

A. Why, yes. We had this experience in shipments going routed in connection with the Southeastern and Mason & Dixon Lines.

614 There may be one, and sometimes two connecting lines beyond that, and we have had this experience: As long as they are in the hands of either one of these two systems, they can locate them and they come back to us on reconsignment to some other customer more quickly than if they get beyond there. In other words, if the traffic gets out of their hands, it is harder to accomplish these diversions and recalls.

Q. So far as the question of recall is concerned, would that be occasioned by faulty addressing of the shipment in your shipping department?

A. It may be, or it may be that the customer does not need the goods and somebody else does, or it is bad accounting, or something like that.

Q. So that regardless of the approval or disapproval of this application, you would still have that condition existing in your own shipping department?

A. Oh, yes; sure.

Q. Would you say that the same would be true in so far as the question of reconsignments of goods is concerned?

A. Yes.

Q. Now, could you tell us, Mr. Faivre, if at your particular plants, the trucking companies that you have named here are supplying help for the purpose of loading and unloading the equipment?

A. They are doing that. They come in and pick it up.

Q. Would you tell us the number of employees that are  
615 used in that operation?

A. Usually two men to a truck.

Q. Those trucks are not loaded by your employees?

A. No, sir.

Q. Those men are not stationed at your platforms, your loading platforms?

A. No, sir.

Q. All day long?

A. No, sir.

Q. The men who arrive there with the trucks.

A. No; they are not. Well, in one case they may send out two or three trucks, and they wait around there. Likewise, our shipping department may be waiting for the freight.

Mr. O'BRIEN. That is all.

Exam. BAKER. Mr. Faivre, you stated the amount of your traffic which moves by motor carrier. What proportion of your total shipments is comprised of motor carrier shipments? Do you have more by rail than you do by motor carrier?

The WITNESS. Outgoing shipments?

Exam. BAKER. Yes.

The WITNESS. No; approximately 95 percent of our outgoing shipments today—no; I will have to take that back, on account of a recent development—we have recently been making shipments in carloads, since we have had a carload rate, in through cars to New York, and we had to take that tonnage away  
615 from the truck lines, on account of cheaper rates.

Exam BAKER. I take it, then—

The WITNESS. Up until that period, our movements outbound, that is truck movements, amounted to approximately 95 percent.

Exam. BAKER. What would it be now?

The WITNESS. What would it be now?

Exam. BAKER. Yes.

The WITNESS. It would still be about 50 to 60 percent.

Exam. BAKER. I take it from your previous statement, then, that there is rather strong competition between the rail lines and motor carriers for your business.

The WITNESS. That is right—rather keen right now.

Exam. BAKER. That is all I have of this witness.

Mr. WIPRUD. Before the witness leaves, may I ask just another question?

By Mr. WIPRUD:

Q. You have indicated a strong competition between rail and motor carriers. Is that competition based upon service or rates?

A. Rates altogether.

Q. Rates altogether?

A. Yes, sir.

Q. In other words, are the truck rates lower than the prevailing rail rates?

A. No; the rail is lower than the truck rates.

Q. So that competition is based largely on the more flexible service of the motor carrier.

A. I beg your pardon?

Q. The competition is based upon the difference in the service; is that right?

A. No; it is based on difference in rates.

Exam. BAKER. Well, actually, Mr. Faivre, don't you, in determining whether a shipment is going by motor carrier or by rail, have to consider both the service and the rate? You consider both of these aspects; don't you?

The WITNESS. No.

Exam. BAKER. Well, when you decide—

The WITNESS. Except in the case of extreme emergency.

Exam. BAKER. Well, I say you have to give consideration to both of those problems do you not?

The WITNESS. Well, there is such little difference that we never had occasion to do that.

Exam. BAKER. I understood you to say that previously you gave about 95 percent of your outgoing shipments to motor carriers.

The WITNESS. That is when the rates were on a competitive basis.

Exam. BAKER. And that you gave that proportion of your shipments to motor carriers because you thought generally they gave you better service.

The WITNESS. That is right.

618 Exam. BAKER. And when the railroad give you lower rates, you transfer a certain proportion of your traffic to the railroads?

The WITNESS. That is right.

Exam. BAKER. Well, in determining the traffic which would go to the motor carriers, you gave consideration to the better service, and also as to whether or not that better service would justify the payment of the higher rate; did you not?

The WITNESS. No; because all of our yarn is sold on a delivered basis. We pay the freight, and we use the lowest rate, invariably.

unless the customer should choose to pay the difference between the lowest rate and the higher one.

Exam. BAKER. Is it true, then, that all of your shipments would go by rail unless the shippers should specify the motor carrier delivery?

The WITNESS. No.

Exam. BAKER. What would you do, then?

The WITNESS. We pay very little attention to the customer's routing. We control the routing. We may use the customer's routing if he can show it is more convenient than the routing we choose.

Exam. BAKER. Why do you ship any part of your merchandise by motor carrier at the present time since their rate is higher?

619 The WITNESS. Because we cannot take advantage of the carload rates right now, in certain instances, by pooling cars and using stop over privileges.

Exam. BAKER. It would be less-than-carload freight, then?

The WITNESS. It would be less-than-carload against motor truck on that particular tonnage, you see.

Exam. BAKER. Do you have any further questions, Mr. Wiprud?

Mr. WIPRUD. I have this statement to make in connection with that situation, Mr. Examiner, that perhaps in this statement we find the reason why a reduction of rates is not feasible as a result of the claimed economies of this unification, and perhaps it will be found in the witness' suggestion. Therefore, I would like to suggest to the Examiner the pertinency of making some inquiry into that, in connection with this proceeding.

Exam. BAKER. I do not see that it is relevant to this proceeding, Mr. Wiprud. We do not go into rate matters in our section.

Mr. WIPRUD. I understand, Mr. Examiner, but it is merely going into the reason why a reduction in the rates would not be effected as a result of the claimed economies of this unification. It is a condition and not a rate or a scale of rates that has to be considered.

620 Exam. BAKER. What would you hope to show that would be relevant to the question of whether or not this unification would be consistently in the public interest?

Mr. WIPRUD. Only this, as I see it, Mr. Examiner, that despite these claimed economies which it is contended will result from this unification, the benefit to the public by way of a reduction in the rates cannot be effected because of another agency which exists amongst themselves to determine what a given rate shall be. In other words, there is a further step that will have to be passed before the benefits that are claimed can be passed on to the public by way of a reduction in the rates.

**Exam. BAKER.** Mr. Wiprud, the Interstate Commerce Commission is given jurisdiction under other sections of the Act over the rates involving motor carriers. They may order reductions, or in some cases they fix the minimum rates, and a proceeding of that kind is wholly foreign to a unification proceeding, and I must adhere to my former ruling that we will not go into the question of fixing rates in this proceeding.

**Mr. WIPRUD.** I respectfully except to the ruling, Mr. Examiner.

**Exam. BAKER.** The exception will be noted. Are there any further questions of this witness, Mr. Joseloff?

**Mr. JOSELOFF.** No.

**Exam. BAKER.** The witness is excused.

621 (Witness excused.)

**Exam. BAKER.** Before you call any other shipper witnesses, I would like to request that, both on direct and cross-examination, we refrain from questioning the witnesses with respect to operating matters. We have already had on the stand, and probably will have additional witnesses, who are obviously much more qualified than representatives of these shippers to testify as to the economies which could result from this expedited service. I feel, in the interest of expediting this proceeding, it is unnecessary to question the shipper witnesses on that subject, but, rather, that you confine their examination to the benefits which they might derive from the anticipated economies or expedited service, or whatever it is claimed will result from this transaction. Off the record for a moment, Mr. Reporter.

(Discussion off the record.)

**Exam. BAKER.** On the record. You may call your next witness.

**Mr. COCHRAN.** Mr. Greer.

**W. E. GREER, Jr.,** being first duly sworn, testified as follows:

Direct examination by Mr. COCHRAN:

**Q.** State your name and place of residence.

**A.** W. E. Greer, Jr., Greenville, S. C.

**Q.** What is your business?

622 **A.** Textile business.

**Q.** What position do you hold in the textile business?

**A.** Assistant treasurer and secretary of Judson, Mills, Greenville, S. C.

**Q.** Is that plant located in Greenville, S. C.?

**A.** Yes, sir—within a mile of the city limits.

**Q.** What does it manufacture?

**A.** Principally rayon fabrics; some fine cottons.

Q. Do you have direct charge or supervision of the shipments in and out of that plant?

A. Yes.

Q. About what amount, in tons or pounds, do you ship out each year?

A. Our outbound shipments amount to slightly under 10,000,000 pounds yearly.

Q. And your inbound shipments, if you can give them?

A. You mean by truck or the total? I would say it runs about two to one—over 20,000,000 pounds.

Q. What areas do you ship into?

A. Principally into what is known as Paterson or the New York area, and into New England.

Q. What proportion of your shipments, if you know, go by rail and what proportion by motor transportation?

A. Approximately 88 percent by truck and 12 percent last year by rail.

623 Q. Can you name the motor carriers operating in your area that you use for the transportation of your products?

A. In and out, do you mean?

Q. In and out.

A. Well, there are, I should say, about twelve or more lines that we use.

Q. Will you name them?

A. Of course, we have Transportation, Horton, Atlantic States Motor Lines, Harris Brothers, Akers Motor Lines, Mundy Motor Lines, Miller Motor Lines, New South Express, Textile Truckers, Lewis & Holmes Motor Freight, Mountain Truckers, and Crown Motor Line. Those are the principal lines.

Q. Do you give those lines a part of your business regularly?

A. Inbound, yes. As far as outbound, most of our goods are routed by the customers themselves—a large part of them are.

Q. Under routing orders?

A. Yes.

Q. Can you name the trucking companies that carry your goods, or are available for such carrying, from Greenville to the metropolitan area?

A. We have Transportation, Horton, Atlantic States, Miller Motor Lines, I believe, and I am not sure about Harris Brothers. Those other four have terminals in Greenville.

Q. Are there any other truck lines operating?

624 A. The other truck lines have terminals in Charlotte, nearby, but do not have a terminal in Greenville.

Q. Are there several of those that operate in that manner?

A. Yes.

Q. They come into your area and pick-up and deliver in the metropolitan area?

A. Yes, sir.

Q. In metropolitan New York?

A. Yes.

Q. Do you know the names of the companies included in this consolidated proposal?

A. I think most of them; yes, sir.

Q. Which ones operate in your territory?

A. Well, there is Transportation, Barnwell, Southeastern, and Horton, I believe. They are the principal ones—Southeastern more into the mountains to the west of us.

Q. You do not ship directly by McCarthy?

A. No, sir.

Q. Arrow?

A. No, sir.

Q. Consolidated?

A. No, sir.

Q. Moran?

A. No, sir.

Q. Do you know where those companies operate?

A. Arrow, I think, is mainly in the East. Moran—

625 Q. Well, you need not name them specifically.

A. Well, into Buffalo and New England area.

Q. Have you formed an opinion as to what would be the result to the public generally if this unification and consolidation were permitted by the Interstate Commerce Commission and were brought into effect?

A. Well, in my opinion, it would create safer and faster service, one that is more efficient, more flexible and economical.

EXAM. BAKER. I believe we are now getting into the questions that I hoped to avoid. Could you not frame your questions in such a way that, for instance, if the proposed unification resulted in a speed-up in service, would it be of benefit to him as a shipper.

Mr. COCHRAN. That is a very good way to put the question.

The WITNESS. Yes, sir.

By Mr. COCHRAN:

Q. If this consolidation is permitted, will it result in benefits to you as a shipper and to your customers?

A. Yes, sir.

Mr. WIPRUD. Just a minute, Mr. Examiner. That is not the suggested question.

Mr. COCHRAN. In what way?

Exam. BAKER. That is just the point I wanted to avoid. I do not believe these shipper witnesses are qualified to testify to the operating results of this unification; that is, as well 626 qualified as some expert witnesses we have had who are operating men. It has already testified that there would be savings in time and certain economies, among other things. I would prefer that you merely ask this shipper that if the unification would result in a saving of time, would it be of benefit to him, and these other matters of which he would have personal knowledge.

By Mr. COCHRAN:

Q. Assuming that this unification would result in economies and in a more expeditious carrying of freight and the saving of hours and time in transporting freight, and afford a better service generally, what, in your opinion, would be the result to the public generally?

A. It is bound to be of advantage to the public, because, as far as we are concerned, it would be a help to us. It would eliminate an excess number of trucks at the loading platform, in and out-bound, which is quite a problem. In our case we had to build extra space for them at extra cost. It would be easier tracing shipments in case of any claims that would come up where there are transfer lines. As I said, a large number of our shipments go into New England area, so that there is not so much transfer of lines in our case. One line handles it through, and only a small percentage goes to New England—

Q. Would a shortening up of the time be advantageous to your customers and to you?

627 A. Certainly. The time element in the moving of freight is very important. At least, they seem to think it is.

Q. Do you have competition in your business?

A. I think we have considerable. I would not say how many rayon manufacturers there are in the United States, but there is quite a number. It is very competitive, highly competitive.

Q. On the question of savings in time on shipments, that would bring you nearer to the markets, and in that respect it would be of advantage to you?

A. Yes, sir.

Q. Assuming that there would be elimination of interchange of traffic on direct shipments from your place of business to the New York Metropolitan area, would that result in an advantage to you or to your customers?

A. Well, it certainly makes it speedier, and it is easier to follow shipments, and so forth, but in our case there is very little transferring done. Most of these lines go straight through.

Q. Do you finish your goods?

A. Everything is sold entirely in the gray f. o. b. the mill, and they have it finished and give us our shipping instructions.

Q. Then, as a matter of fact, you ship it to the finishers in the metropolitan area?

A. We ship it to the finishers and to the converters, 628 themselves.

Q. Do any of your shipments go into the New England area?

A. Approximately 9 to 10 percent, mostly cotton goods.

Q. Have you named all of the carriers furnishing or offering to furnish service to your plant on shipments? I believe you named four or five.

A. That is all I recall at the present time.

Q. There are numbers of others?

A. We are under routing instructions, and we go to quite a lot of difficulty to find them. We call New York back and ask them where to locate that particular line, so that we can notify them, in numerous cases going right into New England.

Q. You do not mean that those you named were all in New York?

A. No, sir; just the principal ones.

Mr. COCHRAN. That is all the questions I care to ask.

Exam. BAKER. Cross-examine.

Mr. WIPRUD. I have just a few questions, Mr. Examiner.

Cross-examination by Mr. WIPRUD:

Q. What proportion of the business that moves by truck from your plants moves over the lines of the carriers involved in this unification?

A. You mean the total in and outbound?

Q. Well, let us take the total outbound, first.

A. I would say about 80 percent.

Q. Eighty percent of it moves over two lines involved 629 in this unification?

A. Yes, sir. That is routing request, routing instructions of the buyer.

Q. Yes. I think you have already testified that you have direct service now.

A. That is right.

Q. Between Greenville and New York City.

A. Yes. In connection with our inbound shipments, it runs about 25 to 30 percent.

Q. Twenty-five to thirty percent?

A. Yes.

Q. When you speak of inbound shipments, where do those shipments originate?

A. Principally in the rayon-producing areas mentioned by the previous witness. That is, Viscose has a plant at Marcus Hook, Pa., Lewiston, and Roanoke, Va., Parkersburg, W. Va., Meadville, Pa.; also Ancell in Cumberland, Md.; American-Bemberg plants at Elizabethton, Tenn.; American-Enka is at Asheville, N. C. The shipping point is called Enka. DuPont is at Old Hickory. We use all of the producing plants in the United States. We have to with such large consumers.

Q. On your inbound business, what percentage would you say would be competitive between the independent lines that you have mentioned, and the two lines to be unified in this  
630 proposal?

A. Well, roughly, I would say practically all of it—95 percent, at least.

Q. Ninety-five percent of it would be competitive?

A. Yes; maybe a hundred percent. I would have to check it.

Q. Would you say that today the business inbound moves largely by combination of two or more carriers?

A. I would say over 50 percent of it, probably.

Q. To the extent, then, that you could move your inbound shipments over lines of one carrier, assuming this unification were approved, would it be your tendency to divert tonnage to that single-line carrier?

A. The answer to that direct question would be one.

Q. Will you explain your answer, Mr. Greer?

A. It is much easier and simpler for us to have one truck coming in and one truck going out, to get a solid truckload to various points, rather than be interrupted throughout the day by the trucker, every 15 minutes, which happens at the present time. Of course, they do load and unload, themselves, but the platform is always crowded. I don't feel, and nobody would be foolish enough to give all the business to any one line. We have seen that, and have distributed it among the lines on which we think is an equitable basis. Of course, one of the primary require-

ments is speed in delivery, because, for the last year, the  
631 textile industry has operated on a hand-to-mouth basis, without enough yarn to run on, and if a shipment is delayed in transit 24 hours, we have to shut down the looms, which costs us money, naturally; but in answer to your question, it is not to be our policy to switch the business over. They would probably get about the same percentage that they are getting at the present time, unless the deficiency got to such a point that it would mean closing down our looms.

Q. Then, insofar as this proposed unification is concerned, it would not change your methods of transporting inbound business?

A. Not very much; no, sir. We have that practice definitely set.

Q. There would be nothing in the economies that you talk of here that would impel you to do so?

Mr. SULLIVAN. I object to that question, Mr. Examiner. We did not go into that on direct.

Mr. WIPRUD. We are talking about economies here.

Exam. BAKER. You did not ask whether this transaction would result in economies. You asked whether or not, on the basis of the testimony given with respect to economies, whether that would impel him to make a change in his policy with respect to shipments.

Mr. SULLIVAN. The only point I make is that it has not been determined whether he knows of any economies, or what they are; so that he could answer the question.

632 Exam. BAKER. Have you heard the testimony this morning?

The WITNESS. No; I only heard the testimony of the previous witness; that is all.

Mr. WIPRUD. Mr. Examiner, all through the direct examination there was nothing but a discussion of the economies to be effected in connection with this proposed unification.

Exam. BAKER. Suppose you reframe your question.

By Mr. WIPRUD:

Q. Your testimony, I believe, Mr. Greer, was that the proposed unification would be of benefit to the shipper.

Exam. BAKER. No; he did not testify to that, Mr. Wiprud. That is what we are trying to keep away from. He testified that if certain things resulted, it would be of benefit to the shipper.

Mr. WIPRUD. All right.

By Mr. WIPRUD:

Q. If the proposed unification would result in economies of transportation and increased efficiency in transportation, and the elimination of interchange in transportation, would those results impel you to change your present method of handling your inbound business?

A. It might change—it might impel us to reroute certain items which were in a particular hurry. As far as economies are concerned, the principal ones I am speaking of here. The principal raw material is rayon. Rayon is sold at a flat price delivered, and so the freight rate does not affect the raw material price to us.

633

Q. Well, if the result would not be to materially change your method of doing business, what possible effect would this unification have upon you as a shipper?

A. Well, it would cut out quite a lot of annoyance by having excess trucks back up to the platforms, in and out, all day long. As I tried to explain, it would be quite a benefit on that, and in the customers getting their goods to New York, which is their primary market, and which is a pure time element.

Q. Is that the extent of the benefits which you anticipate?

A. I do not know of any other benefits. I don't know anything about rate structures or prices, or anything like that.

Mr. WIPRUD. That is all.

Exam. BAKER. The witness is excused.

(Witness excused.)

Exam. BAKER. We will adjourn until 2 o'clock.

(Whereupon, at 12:40 o'clock p. m., a recess was taken until 2 o'clock p. m., of the same day.)

634

AFTERNOON SESSION—2:00 P. M.

Exam. BAKER. Come to order, please. Gentlemen, before we start with the examination of the witnesses—this is off the record, Mr. Reporter.

(Discussion off the record.)

Exam. BAKER. Let us go back on the record now. Will you call your first witness.

Mr. SULLIVAN. Before doing that, Mr. Examiner, you made a request when Mr. Arnold of the Transport Company was on the stand that we furnish you with copies for your record of the lease agreement between the Arrow Carrier Corporation and the Transport Company, the agreement involving the purchase of the Arrow stock by Transport Company and the subsequent agreements with respect to extension of the time and modification of those agreements. I have here for you those documents which you requested, with the exception of the original—copy of the original contract of May 2nd between Arrow Carrier Corporation and the Transport Company, and that I will have as soon as one can be found around New York somewhere. So I thought at this time I will give you these.

Exam. BAKER. Do you have a witness here who can testify as to the accuracy of those documents?

Mr. SULLIVAN. I am fearful I have not. Mr. Arnold had them photostated from the documents which he had here and  
635 from which you made the request. Let's see. The only thing I could do would be to verify them later perhaps. Mr. Ackerman has gone. I am just looking to see if there is—I

can get Mr. Arnold back from New York. He had to go home. We were keeping him here, but he had to go home because of his physical condition.

Exam. BAKER. Well, will it be satisfactory to the other parties if Mr. Arnold verifies the documents?

Mr. SULLIVAN. Incidentally, they are copies, but they are certified by Mr. Arnold. I know his signature and I can perhaps verify his signature.

Exam. BAKER. Have you any objection to receiving the documents in evidence?

Mr. WIPRUD. I have not seen them.

Mr. SULLIVAN. I will be happy to show them to you. I understand, Mr. Examiner, that either similar copies or duplicate originals of the agreements themselves are already in the Commission's files in conjunction with some other matter, so that these could be verified from that.

Exam. BAKER. I believe some of them are, but not all of them.

Mr. SULLIVAN. I wouldn't know. I was just told that the Commission had copies.

Mr. WIPRUD. Suppose you call your witness.

Mr. SULLIVAN. Surely.

636 Exam. BAKER. Suppose we mark them for identification first, Mr. Sullivan. Do you have copies of those?

Mr. SULLIVAN. No; I have not. I think I specifically asked you if we should offer them as an exhibit, and you said could we supply a copy of these documents for the record, and I interpreted that to mean that you wanted them for the Commission's files in this matter rather than as an exhibit in the case.

Exam. BAKER. Oh; that was not my understanding. I indicated in connection with some articles of incorporation, I believe, that no additional copies would be required, but in connection with those documents, unless you have copies available for opposing counsel at this time, I will not mark them for identification. I suggest that you obtain sufficient copies.

Mr. SULLIVAN. All right. My only point is—perhaps I misunderstood your request. He had already testified as to the documents, or to the substance, without objection, and you asked if we could supply a copy for the record, so I interpreted that to mean that it was to complete the Commission's files in the matter rather than as an exhibit, because we were not offering them.

Exam. BAKER. Well, in connection with the documents requested, unless specific objection is made, you should plan to  
637 furnish copies to opposing counsel, the same as any other exhibit.

Mr. SULLIVAN. All right. We had not anticipated they were to be an exhibit. We will undertake to have additional copies made of them.

Exam. BAKER. In connection with your statement as to Mr. Arnold coming down from New York to testify to the documents, I might ask intervenors if there would be any objection if Mr. Arnold verifies before—or acknowledges the accuracy of the documents before a Notary Public. Would there be any objection to receiving them in evidence in this proceeding?

Mr. SULLIVAN. In the meantime you can be looking at them. I did not mean to take them away from you.

Incidentally, I just realize what you asked for. That original contract in the Arrow-Transport deal is a rather voluminous bunch of papers, for some reason or other, and it is really going to be something to have photostated and a lot of copies made of them, because we have to work with a photostat copy to start with.

Exam. BAKER. If all the parties will agree to incorporate that document by reference to the MC-F No. 1223 Docket, it will be satisfactory to the Examiner.

Mr. SULLIVAN. I think—Mr. Wiprud, I am about, or I do now, make a request that the original contract between the Arrow Carrier Corporation and The Transport Company, copy of which is in the Commission's files in case MC-F 1234—

638 Exam. BAKER. Isn't it 1223?

Mr. SULLIVAN. 1223, 1244, and 1264, be incorporated by reference, and there have been no amendments in that contract. Except as it may be amended by these documents here, there are no changes. These are the amendments which I can't have copies made of.

Mr. WIPRUD. Well, Mr. Sullivan, these copies of leases here and so forth, they were not part of the record in the former proceeding.

Mr. SULLIVAN. No, and I am not asking that they be incorporated by reference.

Mr. WIPRUD. Only Arrow.

Mr. SULLIVAN. I am referring only to the original contract of the Arrow-Transport deal, to which these pertain, and which original contract is in the Commission's files in the case numbers which I gave.

Mr. WIPRUD. No objection to that.

Exam. BAKER. Any objection by any intervenor?

Mr. WIPRUD. No.

Exam. BAKER. If not, the document described will be incorporated in this record by reference.

Mr. SULLIVAN. Mr. Altwater, will you take the stand.

JOHN P. ALTWATER, being first duly sworn, testified as follows.

THE WITNESS. John P. Altwater.

639

Mr. O'BRIEN. Would you mind repeating that?

THE WITNESS. John P. Altwater. A-l-t-w-a-t-e-r.

Direct examination by Mr. SULLIVAN:

Q. Give your address, please.

A. 22 Roseville Street, Buffalo, N. Y.

Mr. SULLIVAN. May I have just a second? I want to see Mr. Richer here.

Exam. BAKER. Off the record.

(Discussion off the record.)

Mr. SULLIVAN. May I digress just a minute, perhaps on the record or not, as you choose.

Mr. Reicher, who just came in, informs me that Tuesday morning would be the earliest he would be in a position to testify, and that under those circumstances he would have to come in here with not more than six typewritten copies of his exhibits, or probably five, because he will have to have one sent to the photostater; so that we would be in a position to have five copies available here to proceed with his examination at that time. In the meantime they would be at the photostat place, having such additional copies made to send to any parties who may have come in in the meantime, but I think we have enough for working purposes as to those persons actively engaged here now, and then within a day or so afterward we would have photostat copies sent by mail or otherwise to such parties.

640 Exam. BAKER. At the present time there seem to be only three intervenors who are present. Five copies will probably be sufficient.

Mr. SULLIVAN. Well, having that in mind, I can say directly to you that Mr. Reicher will be ready to proceed on Tuesday.

By Mr. SULLIVAN:

Q. Mr. Altwater, you are connected with what company?

A. The M. Moran Transportation Lines, Inc.

Q. And you are with that company in what capacity?

A. As vice-president.

Q. You have been connected with that company how long?

A. Ten years.

Q. And are there any other vice-presidents?

A. No.

Q. Are you the executive vice-president?

A. Yes.

Q. Prior to your association with the M. Moran Transportation Lines, Inc., were you in the transportation business?

A. Yes.

Q. Will you describe what—

A. I was with the National Carloading Corporation for about two years.

Q. And were you prior to that time in some sort of business?

A. Yes, sir. I was with the Ford Motor Company, connected with their traffic department.

641 Exam. BAKER. Will you raise your voice, please?  
The WITNESS. Yes, certainly.

By Mr. SULLIVAN:

Q. Now, as executive vice-president of the company are you familiar with substantially and in direct charge of the affairs of that company and the books and records thereof?

A. I am.

Q. And you are familiar with the business of that company?

● A. Yes.

● Q. And its operations?

A. Yes, sir.

Q. I ask you, Mr. Altwater, whether or not there have been any changes since the hearing in MC-F 1223 with respect to the charter of that corporation.

A. No; there have not.

Q. Are you connected with the applicant company, Associated Transport, Inc.?

A. Yes; I am a director.

Q. And are you a stockholder to some extent in that company?

A. Yes.

Q. You might let the record show, although it is in evidence, how many shares of stock you have.

A. 2,808 shares.

Q. Of the common stock?

A. Of the common stock of Associated Transport.

642 Q. You are not a stockholder of M. Moran Transportation Lines, Inc.?

A. No; I am not.

Q. Can you give us just a very quick history of the M. Moran Transportation Lines, and when it commenced business, what it does, and how it has expanded?

A. The M. Moran Transportation Lines—

Q. And speak up, if you will. It is difficult for the Examiner to hear you.

A. Has been in existence since 1905, started by Moses Moran as a local trucker in the City of Buffalo. Along about 1921 that company was formed into a corporation, I believe called the M.

Moran Transportation Company, operated by the sons of Moses Moran. They were engaged in hauling commodities generally between Buffalo and adjacent points, such as Rochester, Niagara Falls, and I believe Syracuse, and more specifically for the A. & P. Tea Company. Somewhere about—

Q. Just a moment. Do you mean commodities generally for the A. & P. Tea Company, or they hauled in addition to commodities generally, that they had a contract with the A. & P. Tea Company?

A. I mean in addition to the commodities generally. Along about 1931, I believe it was, there was a segregation of the general trucking business and the contract business that the Moran  
643 people had for the A. & P. Tea Company. I believe the name of the general trucking company was at that time the Safe-Tea Lines.

Q. Spell that.

A. S-a-f-e-T-e-a Lines.

The Moran Transportation Company continued to handle as a contract operation the trucking for the A. & P. Tea Company. About a couple of years after that the Moran people decided to get a name more in keeping with the operations for the A. & T. Company and formed the Pacific Transportation Company and—

Q. Wait a minute. Lest the record be confused, what happened at that time was the name of M. Moran Transportation Lines was changed to the Pacific Transportation Lines, Inc. Isn't that so?

A. That is correct. I meant to infer that. And the present M. Moran Transportation Lines continued in the haulage of commodities generally and extended its lines to—

Q. Wait a minute. Just a minute. It took the name, did it not—the company known as the Safe-Tea Lines, which had taken over the common carrier business, changed its name to M. Moran Transportation Lines, the name given up by the original company?

A. Yes. You are making clearer the change of the name.

MR. TOBIN. Was that about 1933?

644 THE WITNESS. About that, 1932, '33.

At that point there was a complete divorcement of both operations. The present company, M. Moran Transportation Lines, hauled from that time, and still does, haul commodities generally between Cleveland on the west and New York City on the east. I might add that they have not served all that territory since that time.

By Mr. SULLIVAN:

Q. Did not what?

A. They have not served all of the territory since 1932. At that time I think they only served Erie, Pennsylvania, Olean, New York, Jamestown, Buffalo, Rochester, Syracuse, Utica, Albany, Binghamton, and Elmira. A little later on New York City and Philadelphia were added; and then directly after that, by acquisition, I believe, Cleveland, Ohio, was added.

Q. And during this growth period for Moran, from 1932 up to somewhere around 1935, of which you spoke, were there many radial lines added, or what we call off-line serving points off the major routes?

A. Yes. These points that I indicated were just the key points where we maintained terminals. I did not mean to infer that they were the only points served. As I recall it, we served some 450 towns within that area.

Q. Well, what presently is there—what, we will say, for the year 1940 was the approximate gross business of the M. 645 Moran Transportation Lines, Inc., the company referred to in this application and in the various exhibits?

A. About \$2,800,000.

Q. And has there been an increase in the volume of that business during the first six months of the year 1941?

A. Yes; there has.

Q. And could you estimate from the figures for the first six months in 1941 the approximate business you would expect to do in 1941?

A. Yes; I can. About \$3,700,000.

Exam. BAKER. What is the figure for the first six months of 1941?

The WITNESS. About a million seven; a million seven hundred thousand dollars.

By Mr. SULLIVAN:

Q. And the second half of the year in the trucking business, in our experience, has been an increase over the first half?

A. Always a substantial increase.

Q. You named a list of points a little earlier around New York City, rather, major cities served by the company. Do they have terminals at those points?

A. Yes; they do.

Q. And did you name all the points at which they have terminals?

A. No; I did not include Watertown, New York, Niagara Falls, New York; Schenectady, New York. I think that is all.

Q. In addition to the terminals which you have indicated here, do they have other points, call stations, or other facilities for contacting customers and arranging for the pick-up of freight throughout the state?

A. Yes. We have about 55 call stations.

Q. And those are scattered generally throughout the territory?

A. Yes; they are.

Q. You are familiar with the contract that was entered into between the stockholders of M. Moran Transportation Lines, Inc., and the Associated Transport Company?

A. I am.

Q. And are you also familiar with the exhibit contained in the application? By that I refer to the contract of the Horton Motor Lines, which is set forth in full in the application.

A. Yes; I am.

Q. And you are familiar with those portions of the Moran contract which appear in the application as exhibits?

A. I am.

Q. I ask you whether, with those exceptions which are given in the application, is the contract between the Moran stockholders and the Associated Transport the same as the Horton contract except as it might differ as to the number of shares or the names of persons?

647 A. It is identically the same.

Q. What is the status, if you know, of the certificate of convenience and necessity which the Moran Company applied for to the Interstate Commerce Commission?

A. The Interstate Commerce Commission granted all of the rights applied for in that application.

Q. Well, for the sake of the record, if no one objects, may I put it to you this way. No certificate has as yet been issued, has it?

A. No.

Q. But the Examiner's report, with the exception of Pittsburgh, which was abandoned, granted all of the rights sought. Is that correct?

A. That is correct.

Q. Thereafter there was a protest—

Mr. WIERUD. Mr. Examiner, is that material?

Exam. BAKER. I believe that is all in the Commission's record.

Mr. SULLIVAN. If the Examiner is satisfied with it, that is perfectly all right with me.

By Mr. SULLIVAN:

Q. In any event, whatever the status is, the Commission knows about it?

A. That is correct.

Q. Now, does the Moran Company have intrastate operating rights in New York State?

648 A. Yes; they do.

Q. And has a certificate been issued there?

A. Yes; I believe there has been.

Q. Do those rights cover substantially the routes and territory which you have described here as being operated by the Moran Company?

A. Yes; they do.

Q. Have they some intrastate rights in Pennsylvania at Erie?

A. Yes; they have intrastate rights in Pennsylvania between Erie and the adjacent areas, about 15 miles, I think.

Q. That is a local pick-up and delivery common carrier right at Erie, Pennsylvania, is it not?

A. That is right.

Q. That is the only intrastate certificate the company has other than—

Mr. WIPRUD. The beginning of testimony by counsel again, Mr. Examiner.

Mr. SULLIVAN. Well, if you want to spend a week or more here on that—

Mr. WIPRUD. Just ask the question.

Exam. BAKER. I realize the purpose of it is to expedite the proceeding, but in view of the objection, I will ask that you do not lead the witness.

Mr. SULLIVAN. On these quasi-legal matters the only alternative perhaps would be for me to take the stand myself.

649

By Mr. SULLIVAN:

Q. Well, are there any other intrastate rights other than those you have named?

A. New York State, of course.

Q. Well, I said New York State and Pennsylvania.

A. That is all.

Q. What percentage of the business of M. Moran Transportation Lines would you say was intrastate?

A. About 45 percent.

Q. Can you give us the approximate tonnage handled by the company in the year 1940?

A. About 400,000 tons.

Q. And can you give us the figure for the first six months of 1941?

A. 240,000 tons.

Q. Do you interchange with other carriers?

A. Yes; we do.

Q. At what points?

A. At Buffalo, N. Y., and Schenectady, N. Y., and a small transfer at Binghamton, N. Y.

Q. Do you interchange with any of the carriers involved in this proposed merger or unification?

A. Yes; the McCarthy Freight System.

Q. Is that the only one that you interchange with?

A. In this group?

Q. Yes.

650 A. Yes; that is the only one.

Q. Do you know about how many companies you have interchange arrangements with?

A. About sixteen.

Q. If this unification were granted, would you continue interchanging with those companies other than the one in this group?

A. Certainly.

Q. Give the reason.

A. The reason for that being that, with the exception of McCarthy, our other connecting lines operated west out of Buffalo, none of which operate is included in this group.

Q. How about Binghamton?

A. I overlooked that one. We have a connection with the W. T. Cowan Company, involving a very small amount of freight.

Q. And where is that freight going?

A. To Baltimore and Washington.

Exam. BAKER. Please keep your voice up.

The WITNESS. Yes; glad to.

By Mr. SULLIVAN:

Q. Have you any connection to points in Pennsylvania in the territory served by the Arrow Carrier Company at the present time?

A. No; we have not.

Q. Did you at one time have one?

A. Yes; we did.

651 Q. How long ago was that?

A. About four years ago.

Q. And what happened to that connection?

A. I believe that what was left of it was acquired by the Arrow Carrier Corporation.

Q. At that time did you have any connection with the Arrow Company?

A. No. They would not make one with us.

Q. Have you tried to work out connecting arrangements with them?

A. At several different occasions.

Q. And will you give us the reason they assigned for not being able to make a connection?

A. Well, they claimed that they only had a certain amount of equipment available and under the circumstances they could not undertake to operate enough equipment into the Binghamton area to take care of the business which we would have liked to have given them.

Q. What can you say with respect to the quantity of business you would be in a position to tender to a carrier in that territory destined to points in that territory?

A. This would only be an estimate, but from conversations with shippers in our territory that are interested in service to those Pennsylvania points I should estimate a minimum of five or six truckloads a day.

652 Q. And can you say as to whether there would be freight coming from that territory destined to points in New York if the service could be instituted?

A. I would say there would be an equivalent amount of freight coming back.

Q. Incidentally, you, yourself, also have to do with shippers in your business capacity?

A. Yes; I do.

Q. And do you meet many shippers?

A. Yes.

Q. And have you had conversations with them with respect to this proposed unification?

A. Yes; with a good number of them.

Q. And are you in a position to tell us what the sentiment of the shippers with respect to this unification is?

Mr. WIPROD. Isn't this pretty much hearsay, Mr. Examiner?

Mr. SULLIVAN. I suggest, Mr. Examiner, that that is in the ordinary course of his business, one of his duties to find out.

Exam. BAKER. The witness may answer.

A. The general consensus of opinion was that it would be a good move for us to get into a combination of this kind, first, I suppose for the interest of the particular shipper that I was talking to at the time—in fact, I might say that that probably was the only reason,

653 although one or two of my personal friends did also think it was a good idea from the standpoint of the Moran family.

By Mr. SULLIVAN:

Q. Have you an opinion from your experience in the transportation business, Mr. Altwater, as to whether or not this unification, if approved, would be in the interest of the shipping public?

A. I have; yes.

Q. Will you give us that opinion?

A. Well, my opinion is not based on any one particular thing; it is based on a combination of things. The first and, in my opinion, the most important is, that it would give a better and a wider distributed service to the shippers in our territory. It also would relieve congestion at the loading docks. We have to keep in mind that the average manufacturer only made provision for rail loadings and unloadings, and the truck later came into the picture as, you might call, an orphan, and it has always presented a problem to the shipper who has a plant that was built five or six years ago. It certainly would have the effect of reducing accounting work, both from the standpoint of checking bills and from the standpoint of handling claims.

Q. You are thinking of interline bills?

A. No; I am thinking of individual bills represented or submitted by the different companies.

Q. Well, you are speaking from the shipper's point of view.

A. That is correct.

654 Also there has been testimony here by Mr. Horton and several other operating witnesses as to operating and administrative economies, to which I generally subscribe, but from a shipper's viewpoint I think it is vital, because, in the final analysis, costs are always reflected in rates in one form or another. I also have in mind a possible reduction in packing costs.

Specifically, we have a customer in our territory that manufactures typewriters. We handle those typewriters unboxed in our own territory. We are glad to handle them in that fashion because we get a premium rate, as provided for in our classification, and we have found from experience that the claim hazard is no greater than boxed typewriters. However, we have never been able to afford that particular shipper a service to points beyond our lines, first, because our connections refuse to accept them, and, secondly, because we refused to assume responsibility of permitting a transfer of unboxed typewriters.

We also have in mind an advantage, particularly apparent at the present time. Moran has experimented with it to a minor degree. We have two convoys which we use to move six tractors to a point that for a day or two might need extra equipment. The experiment worked out well, but unfortunately Moran did not

655 have enough money to put into a venture of that kind to any greater degree. I think in a set-up such as Associated would have to offer they could probably keep as many as fifty or sixty such convoys available that could be moved to vital spots within 12, 15, or 18 hours to clean up a situation which otherwise might cause difficulties later on.

Q. How does this convoy system that you are talking about operate? What do you mean by—

A. Well, for example, we ran into a situation somewhere about the first part of July. Our transfer points at Binghampton became congested. We moved these two convoys down there with six tractors.

Q. Well, describe what you mean by a convoy. That is one of the things I had in mind.

A. A convoy is an automobile carrier. We load two and sometimes three tractors on the deck and pull it by a third or a fourth, whichever the case might be, which gives us three or four tractors at one spot at a cost of wages of only one driver.

Q. Well, I asked you to describe it particularly for Mr. O'Brien's benefit.

A. I did.

Mr. O'BRIEN. He is a good witness.

By Mr. SULLIVAN:

Q. Incidentally, while we are on that subject, will you state what your experience is as to whether at the present time,  
656 and for some time past, there has been any shortage of drivers and other persons to use in different capacities in the business?

A. There have been in our territory.

Q. Well, will you explain that a little more fully.

A. Well, we have been dependent upon extra help furnished us by the union, and, while the union has undertaken to cooperate to the fullest extent possible, sometimes there wasn't anything they could do about it, and we were compelled to take men who thought they were chauffeurs, but after dropping a few of our trailers we found they just did not fill the bill. In one or two spots we were able to get some relief by the union permitting us to use dockmen, or stevedores, as they are called some places, who have had some driving experience and using them as drivers; but it just had the effect of shortening up our dock hands, but we selected that as the lesser of two evils.

Q. Have you had shortage of available dockmen.

A. We have.

Q. And you still presently have one, haven't you?

A. That is right.

Q. Have you lost employees who have left the trucking business, either as dockmen or drivers?

A. Excuse me. You are completely away from this shipper—

Q. I will get back to that. I want to touch on this while we are on it. Have you—

657 Mr. SULLIVAN. What did I ask?

(Question read as follows: "Q. Have you lost employees who have left the trucking business, either as dockmen or drivers?")

By Mr. SULLIVAN:

Q. To go into other industries?

A. Yes; we have.

Q. Does there seem to be a trend in that respect?

A. I would say there is.

Q. What is the situation with respect to mechanics?

A. That situation is even worse.

Q. Well, what can you say as to whether or not there is a shortage of mechanics at the present time?

A. Well, we know in our own case that there very definitely is, and we are beginning to feel it more each day.

Q. Has the union cooperated with you in attempting to give you all the employees they can?

A. Yes; they have.

Q. Now, then, I did not mean to divert so long, Mr. Altwater, but will you get back to the question you started earlier with respect to the advantages to the shipper?

A. I just had one or two other thoughts in passing. One is the case of insurance. A good number of the customers that I know carry contingent liability. We don't like it, but, on the other hand, we don't blame the shipper for doing it. What I

658 mean by that is he carries his own policy because he fears the truckman might not be able to make good on a sizable claim. We know of several very large people in our area

that do this. It costs a lot of money. We don't think a customer should have to do that. He doesn't do it with the railroad. And yet in our present position we certainly can't blame him. I feel that a combination such as the Associated would obviate the necessity of a shipper having to take such protection. I think the Associated would be quite qualified and able to handle anything that came along, financially or otherwise.

I have one other point in mind. It has always been a sore spot with our shippers, and probably the shippers of other truck lines. That is the matter of tracing shipments that move through a connection. Frankly, we have the situation with our best connection, McCarthy Freight System, and they have probably experienced the same source of complaint from their territory. We can furnish the shipper with prompt information as to the movement of his freight, but when we get over to the other fellow's side of

the line he does not pay too much attention to it. When I call John McCarthy on the phone, we get action, but otherwise—sometimes we don't. The situation is more aggravated in other directions.

Q. Have we an arrangement for interchange of trailer bodies with McCarthy Freight Lines?

A. We have.

Q. And how long have we had it?

659 Exam. BAKER. By "we" you refer to Moran Transportation?

Mr. SULLIVAN. That is right.

A. About two years.

By Mr. SULLIVAN:

Q. Will you state what your experience with that system of interchange of bodies as between two separately owned and controlled lines is?

A. It has been a continual source of annoyance and headaches to both companies. First, McCarthy had to make considerable changes in his wiring system. Secondly, McCarthy, for one reason or another, will send an 18- or 20-foot body to New York State, and Moran would have one of its 30-footers in New England somewhere. Our operating department is constantly faced with that. Next, we have the question of maintenance. I suspect that McCarthy has all he can do to maintain his equipment. And we are in the same position. So as a consequence I am convinced that we do not service each other's equipment certainly the way we service our own—and that is an understatement.

Q. Do you experience difficulty in getting your own equipment back from connecting lines?

A. Yes; we do.

Q. And do misunderstandings arise between your employees and the employees of a connecting line as a result of some of these annoyances of which you spoke?

660 A. May I give you an example?

Q. Yes.

A. For instance, on the matter of tires, we will send a trailer to McCarthy's territory. A tire blows out. Our best auditing minds have not been able to figure what adjustment should be made on the basis of the cost of replacing the tire. We have adequate tire records, but there is always a question there, and we have reams of correspondence related to tire adjustments. That happens to be one that comes to my mind. We have similar complaints with respect to changes of batteries and bulbs and the tail lights and the side lights, and so forth.

Q. Well, are the disputes and disagreements that would result from the sort of thing that you have been describing conducive to the movement of the freight as expeditiously as possible and to the best interest of the shipper?

A. Would you repeat that question?

Mr. SULLIVAN. I will have the Reporter read it.

(Question read.)

A. No.

Q. Do you feel that a through interline movement by a company able to operate uniformly under a consolidated company would be an improvement over the situation?

A. I do.

Q. Now, with respect to the New York and New England  
661 territory, what can you say as to companies having such a through interline movement at the present time?

A. I would say that they have a very distinct advantage over our operation.

Q. Are there such companies other than companies included in this proposed unification who have such a service?

A. Yes.

A. And would you name one or two?

A. I can name Seaboard as one. Liberty Freight Forwarding Company is another. Inter State Motor Freight System. That is about all I can think of.

Q. Incidentally, you speak of Liberty Motor Freight. It has been referred to here by other witnesses. Do you know whether or not there is any connection between that company and the Car-loading Company?

A. I do know there is an affiliation of some kind.

Exam. BAKER. Do you refer to Inter State Motor Freight System of Detroit?

Mr. SULLIVAN. No; Liberty Motor Freight.

Exam. BAKER. I beg your pardon.

The WITNESS. My first reference was to Inter State Motor Freight System of Detroit. In answer to Mr. Sullivan's question I was referring to Liberty Motor System.

By Mr. SULLIVAN:

Q. You say you know that there is a connection between them?

662 A. Yes; I do.

Q. And that freight moves partly sometimes through a forwarder in conjunction with the motor carrier, and vice versa?

A. Yes; that is true.

Q. And what freight forwarder did you refer to? I don't know whether you gave the name or not.

A. Acme Fast Freight.

Q. And what can you say as to whether or not they are a substantial size hauler of freight?

A. Very substantial organization.

Q. Do they have operations in the territory involved in this proposed unification?

A. Yes; they do.

Q. Or part of it?

A. Yes; they do.

Q. And how much of that territory?

A. Well, generally in the southeasterly direction, paralleling to some extent Horton and Barnwell and The Transportation Company, and to the north paralleling to some extent the Moran Transportation Lines.

Q. They also have service in New England?

A. Yes; they do.

Q. Mr. Altwater, did you prepare or cause to be prepared under your supervision a proposed exhibit listing certain carriers operating in the New York State territory and the territory  
663 outside of New York State that is covered by the Moran operations?

A. I did.

Mr. SULLIVAN. May I have this exhibit marked for identification, Mr. Examiner?

Exam. BAKER. The document described will be marked for identification as "Applicant's Exhibit No. 4."

(Exhibit No. 4, Witness Altwater, marked for identification.)

By Mr. SULLIVAN:

Q. I show you a copy of Applicant's Exhibit No. 4, for identification, and ask you if this is the document to which you referred.

A. It is.

Q. Will you tell us what that purports to show?

A. It is intended to show truck lines competing generally with the Moran Transportation Company.

Q. Have you also included in there carloading companies operating in that territory?

A. No; I have not.

Q. Well, I notice Acme Fast Freight. Is that a freight line or carloading?

A. Oh, excuse me. It was not intended to be in there.

Exam. BAKER. Doesn't Acme Fast Freight actually conduct some motor carrier operations in addition to its forwarding operations?

664 The WITNESS. I am sorry. This was not intended to include the carloading companies, but it does include all three carloading companies—or three carloading companies.

Exam. BAKER. Will you name those three?

The WITNESS. Yes. Acme Fast Freight, National Carloading Corporation, and the Universal Carloading and Distributing Company.

By Mr. SULLIVAN:

Q. Well, you have included them in there and they are carloading companies operating in the territory where Moran operates?

A. Yes.

Q. And substantially, so far as New York State itself is concerned, that is also the territory at least over the main routes of which the Consolidated Motor Lines have in operation?

A. Yes; that is right.

Q. So to that extent these same companies would be in competition with Consolidated?

A. Very definitely.

Q. Now, with respect to those carloading companies, do they perform part of their haul by motor carrier, either by motor carrier operations which they operate, or through arrangements with motor carriers companies?

A. Yes; they do.

665 Q. Did you, Mr. Altwater, at my request check or cause to be checked the gross revenue for the year 1940 as shown by the statements, sworn statements, of certain companies filed with the Interstate Commerce Commission?

A. I did.

Q. And certain of the companies are contained in this exhibit?

A. Yes.

Q. Now, will you, with respect to those companies, give us their gross revenue for 1940?

A. The Boss-Linco Lines, 260,520.

Q. That is dollars?

A. Dollars. Canny Trucking Company, Inc., \$198,021; Interstate Motor Freight System, \$9,906,620; Keeshin Motor Express Company, \$5,958,967; Liberty Forwarding & Distributing Company, \$1,915,813; Lyons Transportation Company, \$679,443; Motor Express, Inc., \$2,254,482; Niagara Motor Express, Inc., \$606,740.

Q. Excuse me. Incidentally, was the Niagara Motor Express Company a company which was included in the applications last year, MC-F-1223 and other docket numbers?

A. It was.

Q. And is not in this unification?

666 A. It is not in this unification. Onondaga Freight Corporation, \$430,718; Red Star Express Lines, \$360,927; Seaboard Freight Lines, \$1,725,203.

Q. Incidentally, Mr. Altwater, is the Seaboard Freight Lines controlled by or connected with some other company you have referred to here?

A. Yes. It is connected with the Keeshin Motor Express.

Q. And you see and are familiar with its operations in your territory?

A. Yes; I am.

Q. And both the Keeshin Company and the Seaboard Company come into that territory?

A. They do.

Q. Do you know where they meet with each other?

A. Syracuse.

Q. Do they exchange equipment as between themselves, or do they transfer the freight from one piece of equipment to another?

A. They interchange as between themselves.

Q. Their operation is the same as if they were merged together?

Mr. WIPRUD. Well—

Mr. SULLIVAN. I withdraw that question.

By Mr. SULLIVAN:

Q. Do you know what the situation with respect to control of those companies is?

A. To my knowledge—I am not acquainted with the control as well as I am with the operation of the two companies.

667 They definitely operate as one company to all intents and purposes.

Q. Did you finish giving those names, or will you continue if you did not.

A. Spector Motor Service, \$1,723,681; Transamerican Freight Lines, \$3,498,792; Valetta Motor Trucking Company, \$202,889; Vollmer Transportation Company—I am sorry. I haven't got the figure. Cross that out. Western Express Company, \$708,462.

Q. Are there other carriers who are class I carriers in this exhibit other than those whose figures you have read?

A. Yes; there are.

Mr. SULLIVAN. I offer this exhibit in evidence, Your Honor.

Mr. WIPRUD. May I inquire on the exhibit?

Mr. SULLIVAN. Surely.

Exam. BAKER. You may. Have your completed.

Mr. SULLIVAN. No; but I thought perhaps before it was received he wanted to ask some preliminary questions.

Exam. BAKER. Then, suppose you withhold offering the exhibit until you have completed your examination.

Mr. SULLIVAN. I will withhold it for the moment.

By Mr. SULLIVAN:

Q. State whether or not these companies contained in the exhibit are substantially competitive to the Moran Company with respect to the points named in the exhibit.

A. With one or two exceptions, all of these companies I mentioned serve generally all of the territory now served by Moran.

Q. And in addition to the companies contained in the exhibit, what can you say with respect to other motor carriers competing with the Moran Company in its territory?

A. I would not venture a guess as to the number, but it runs into thousands.

Q. I will ask you this question, Mr. Altwater: From your experience in the trucking business and in the transportation business generally, experience in dealing with shippers, attempting to solicit freight, supply the service which they demand; and so forth, have you an opinion which you can state as to which is the most—we will put it—the toughest competition, the motor carrier operating in your territory doing a gross of \$3,000,000, or substantially what Moran does, or three motor carriers doing a million dollars apiece and covering the territory, substantially?

A. We have always found the toughest competition a combination of the smaller lines; in other words, five or six small truck lines causes more difficulty than the large one.

Q. Are you familiar with the facilities available to the shipping public between, let us say, the New York State-New England territory and the Detroit, Chicago, and similar points in the Middle West?

A. Yes; I am.

Q. By that I refer to motor truck.

A. Yes.

Q. Are there a number of companies offering a through service?

A. Yes; there are.

Q. Would you name some of them.

A. Spector, Keeshin, Inter State, Liberty, Midwest Haulers, Monarch—

Q. Well, that is sufficient. Are there others?

A. Yes; there are. I can't pick them out here, and they might not be—probably are not on this list, because that list was not meant to include the operations from New England into the middle western area.

Q. Is there anything more, Mr. Altwater, that you would like to say with respect to the matters we have been touching on here?

A. Generally, I would say that it seems to me we are only trying to do in the case of Associated what is already an accomplished fact in other sections of the country. I don't know of—well, I will put it another way. The shipping public has services of several truck lines in the Middle West extending all the way over to New England, whereas I know of nothing like it on the Atlantic Seaboard.

Q. Just one more point I wish to take up, Mr. Altwater, 670 and then I will be through. There is an exhibit attached to the Moran contract, copy of which is attached to the application, in which reference is made to a total of 29,000 shares to be turned over to the stockholders of the Moran Company in addition to whatever the formula produces. In conjunction with that I ask you if you are acquainted with Miss Amelia Moran.

A. Yes; I am.

Q. Is she the insurance broker of the M. Moran Transportation Lines?

A. She is.

Q. And has she been for some years?

A. Several years.

Q. She is what relative of Mr. Moran, of the Moran Company?

A. Sister.

Q. An unmarried sister?

A. Unmarried.

Q. If this merger is effectuated and the control of the Moran Company passes to the Associated Transport she will lose this business?

A. Yes; she will lose it.

Q. And can you give us some idea of the amount of commissions she has been receiving a year from the insurance business?

A. Twenty-eight to thirty thousand.

Q. In addition to that she has a general insurance business?

671 A. That is correct.

Q. Now, then, you heard Mr. Arbour's testimony?

A. Yes; I did.

Q. And in conjunction with that testimony did you note the number of tons that he indicated were hauled by Consolidated during the first six months of 1941?

A. I believe it was about 250,000 tons.

Q. And again, will you state the tons hauled by Moran during the same period?

A. About 240,000.

Q. The difference between those two figures being 10,000 tons; is that right?

A. That is right.

Q. And the revenue for Moran you gave for the first six months is a million what?

A. A million seven; about a million seven.

Q. A million seven hundred thousand dollars?

A. That is right.

Q. And is that less than the revenue received by the Consolidated Company for that period?

A. By several hundred thousand. As I recall it, I think Mr. Arbour testified to a figure of—

Q. Did he give us a figure?

A. As I recall, it was about two million one, or two million two.

672 Q. Refreshing your recollection, was it between two million five and two million eight? Well—I mean those things don't make any difference. They are in the Commission's records.

A. I would not change that opinion. I think it was two million one.

Q. In any event, for handling substantially the same amount of tonnage the gross revenue is considerably less.

A. Very substantially less.

Q. And can you give us some reason for that?

A. Well, the chief reason has been due to the unstabilized conditions in effect on intrastate New York State business. We have only had a regulatory bill in New York State for a couple of years and it has not as yet had much effect. As a result we have competitive conditions, brought about by the great number of truckmen in the area, which has had the effect of reducing rates to the point where they are generally about 15 to 20 percent below the rates in other territories.

Q. Has some progress been made towards correcting that condition by the regulatory authorities in New York in trying to make some uniform rates?

A. There has been some progress.

Q. And with respect to the rates presently applicable on intrastate business in the territory, what can you say as to whether they are compensatory for the service provided?

A. They are not compensatory.

673 Q. What can you say as to whether or not they constitute a drag which causes a reduction in freight?

A. Very definitely they do.

Q. I will ask you whether or not these matters were discussed among the group which presently constitutes the directors of the Associated Transport at the time it was being put together?

A. These matters were discussed; yes.

Q. As a result of those discussions was consideration given to some method of equalizing that situation with respect to Moran in the New York territory and the situation with respect to the companies in other territories where some progress had been made, or considerable progress had been made, towards stabilizing the rates and making them generally compensatory?

A. There was; yes.

Q. And that was discussed, as well as the situation with respect to Moran?

A. That is correct.

Q. And was consideration given to the fact that under the self-insurance program or the general program which could be effectuated by the Associated Transport Company savings would be effected over what presently is the cost of the insurance to a much greater degree than if a broker was receiving full commissions?

A. That was considered; yes.

Q. And the upshot of these various considerations was the  
674 agreement to add 29,000 shares generally for the stock of the Moran Company?

A. That is right.

Q. Would you give us the earnings for the first three months of 1941 for M. Moran Transportation Lines?

A. There were no earnings. I recall that we lost six or seven or eight thousand dollars, somewhere around that.

Q. And what was the situation as of the end of the second quarter, or the six months' period of 1941?

A. Before taxes, we showed a profit of approximately seventy-eight or seventy-nine thousand dollars.

Q. Did Miss Moran also have another business in which she did some business with the M. Moran Transportation Lines which resulted in her making some profit on the business which she did?

A. Yes; she did.

Q. And that is the Division Tire Sales Company?

A. That is right.

Q. Incidentally, who are the stockholders of that company?

A. To my knowledge, she is the only stockholder.

Q. Is any officer of the Moran Company an officer, director, stockholder, or agent of that company?

A. No.

Q. Is that company on the same premises with the M. Moran Transportation Lines?

675 A. No; it is not.

Q. Where is it located?

A. Oh, it is located generally about a mile and a half from the Moran Transportation Lines.

Q. And what was the business of that company?

A. General retail gasoline sales, parts, tires, household appliances.

Q. Washing machines, accessories, and so forth.

MR. SULLIVAN. I think that is all the questions I have.

Exam. BAKER. Cross-examination.

Cross-examination by Mr. WIPRUD:

Q. Will you please refer to exhibit No. 4 marked for identification. Under the head of "Representative Points," Mr. Altwater, you listed Binghamton, N. Y., and you have marked with an "X" there the carriers that serve that point. Will you state whether or not the carriers so indicated operate from Binghamton to Scranton, and, if so, which ones?

A. I assume you mean perform the service by handling freight between Binghamton and Scranton?

Q. Well, let us say that operate over that route.

A. Over that route. The Atlantic Coast Line, I believe—Atlantic Coast Freight Lines, Highway Freight, Inter State Motor Freight System, Keeshin, I believe; I am not sure. I believe Keeshin does. Liberty Forwarding, Richards Motor Freight.

That is all I can recognize.

676 Q. Now, will you state for the record what other carriers listed under Binghamton operate over routes operated by Moran; and, if so, between what points from Binghamton?

A. Atlantic Coast Line—

Q. You have already mentioned that as operating through Scranton.

A. Oh, what was your question, please?

Q. Of the other carriers that you have listed under Binghamton, will you state for the record those carriers that operate between Binghamton and some other point, other than Scranton, that parallel the routes of Moran.

Exam. BAKER. Mr. Wiprud, wouldn't that be a statement that would duplicate everything in this exhibit?

Mr. WIPRUD. I think not. I think the fact is that he has listed there every carrier that touches Binghamton, and has testified that they are all substantially competitive with Moran. We would like to know what ones of all the carriers listed are competitive.

The WITNESS. Just out of Binghamton?

By Mr. WIPRUD:

Q. Just out of Binghamton, yes.

A. All right. Boss-Linco Lines—

Exam. BAKER. Just a moment. I am afraid we will be here all afternoon, if I understand the question. Off the record a moment.  
(Discussion off the record.)

677 Exam. BAKER. Back on the record. You may answer,

Mr. Altwater.

A. Boss-Linco Lines—

By Mr. WIPRUD:

Q. What is that?

A. Boss-Linco Lines, C. A. B. Y. Transportation Company—

Q. Will you state also the town to which it is competitive, please, from Binghamton.

A. All right. Boss-Linco, Elmira, Buffalo, Jamestown, Westfield, Dunkirk, Silver Creek, Rochester, Syracuse, Cortland, Niagara Falls, Lockport, Silver Creek—

Q. Well, I have just asked—

A. I am answering it.

Q. I mean the nearest point to indicate the competitive situation.

A. Shall we have the next one?

Q. Yes.

A. C. A. B. Y. Transportation Company—

Mr. SULLIVAN. Now, just a minute, Mr. Altwater, before you answer. Excuse me. I wish to address the Examiner. I think Mr. Altwater should give all the points to which they are competitive out of that town and not be shut off to the nearest town, because that would not illustrate the point counsel is trying to make at all. He says only because they touch that town it

678 is not competitive to the Moran Company. I mean, a false impression will be left if he is limited in his answer that way.

Exam. BAKER. I am not sure that I understand exactly what Mr. Wiprud wants the witness to answer. Will you explain that?

Mr. WIPRUD. Yes; Mr. Examiner. There is listed here a great number of carriers that serve Binghamton, and the testimony of this witness is that these carriers are substantially competitive with Moran. Now, I am asking the witness to state for the record these carriers that serve Binghamton that parallel the Moran operation.

Exam. BAKER. You mean parallel wholly or in part?

Mr. WIPRUD. Wholly or in part.

Exam. BAKER. And you desire only that he state just what other points—

Mr. WIPRUD. Well, just to give the connection, that is all, and the direction, from the West, from the North, from the East. State the nearest point to indicate just that these are parallel operations and not some operations that happen to criss-cross Binghamton.

Exam. BAKER. Do you understand, Mr. Altwater?

The WITNESS. Yes—I think. C. A. B. Y. Transportation Company, Buffalo, Erie, Cleveland, Ohio. Will that be enough?

Mr. SULLIVAN. May we have it here that that is not all  
679 the points where they are competitive?

Exam. BAKER. I think the record is clear on that.

Mr. SULLIVAN. All right.

The WITNESS. Canny Trucking Company, New York City. Chief Freight Lines, Syracuse, Auburn, Rochester. I have not mentioned the Central New York Freightways because, frankly, I do not know just where they do go other than I know they go from Binghamton. Cowan, Philadelphia. I am not deliberately skipping a couple in here, for I don't know just where they do go. Eastern Freightways, Buffalo, Rochester, Syracuse. Fairclough, Buffalo, Rochester, Syracuse, Utica. Freer Brothers, Cortland, I think, Cortland, N. Y., and Norwich—I am not sure. Harris Motor Lines, Elmira. Highway Freight, New York, Rochester, Syracuse, Buffalo. Intercity Express, Elmira. Keeshin Motor Express—I am sorry. I mentioned them before.

By Mr. WIPRUD:

Q. Yes; you mentioned them before. You said you had some doubts.

Mr. SULLIVAN. Said he had what?

Mr. WIPRUD. Doubts.

A. No; not Keeshin. I mentioned that first, when you  
680 wanted the names of other than that.

Q. That is right.

A. J. E. Kulp, Buffalo. Leavenworth Motor Express, Elmira, Buffalo. Lightning Express, Buffalo, Albany, Elmira. Midwest Haulers, Rochester, Buffalo, Erie. Incidentally, I am not mentioning any of the three carloading companies. Oneida Motor Freight, Syracuse, Utica, Auburn. Patrick Express—

Mr. O'BRIEN. You mean Oneida Motor Freight, Inc? Is that the one you mean?

The WITNESS. That is right; yes, sir. Patrick Express, Hammondsport. N. C. Purdie, Rochester. Rhinevault Trucking Company, Buffalo, Rochester, Niagara Falls. Buffalo's Trucking

Service, Buffalo, Niagara Falls, Rochester, Albany. Seneca Freight Lines, New York, Jersey City. Smith & Howell, Syracuse. Utica, Buffalo. Stibbs Transportation Lines, Syracuse, Utica, Buffalo, Rochester. Thursam Transportation & Storage, Niagara Falls, Buffalo. Transportation Lines, Inc., Buffalo, Syracuse, Utica. Utica-New York—excuse me. 681 Whinney's Express, Philadelphia. York Buffalo, Buffalo. William Young Transportation Company, Albany, Niagara Falls, Buffalo. I think you will find that those lines that I just finished mentioning would also be marked with an "X" to some other point which is competitive to Moran.

Q. Now, Mr. Altwater, my check shows that you have listed—have checked off, rather, 31 out of the 68 companies that are listed under the heading of Binghamton, those that you have just read off, as being competitive or operating over competitive routes with Moran. In view of that fact, what have you to say about this exhibit reflecting carriers that are substantially competitive to Moran?

Mr. SULLIVAN. I object to the question.

Exam. BAKER. The witness may answer.

A. Do I understand you to mean—that you ask me to make some comments on those I did not mention?

By Mr. WIPRUD:

Q. I ask you the question in view of the fact that out of 68 carriers only 31 have been mentioned by you as being competitive with Moran.

A. The reason for that being that I was not too familiar with the operations of the remaining ones, although they must have rights at least to operate over that territory.

682 Mr. WIPRUD. In view of the statement of the witness, Mr.

Examiner, I object to the introduction of this exhibit as not reflecting the true situation of the facts which it purports to show. The exhibit is misleading and will not inform the Commission as to what the witness has purported to testify to.

Exam. BAKER. Mr. Wiprud, what form would you think an exhibit should take to inform the Commission of competition in that area?

Mr. WIPRUD. Mr. Examiner, I think that your comment a short time ago on this very exhibit illustrates the point I make. The first impression I got of the exhibit was that it would reflect the operations of these lines between the points named on this exhibit. Obviously, from the testimony of the witness it does not. It merely shows a list of a few cities which these carriers touch. It does not show a competitive situation at all. And the witness

testimony is that these carriers are carriers substantially competitive with Moran. I think on its face, in view of the further testimony of the witness, the exhibit is wholly misleading and should not be admitted in evidence.

Exam. BAKER. Your objection will be overruled. The exhibit will be received in evidence.

(Exhibit No. 4, Witness Altwater, received in evidence.)

683 Exam. BAKER. Of course, Mr. Wiprud, you will have the privilege of introducing evidence to contradict any evidence which is being introduced by applicant.

Mr. WIPRUD. I understand, Mr. Examiner. The point I made there was that on the witness' own testimony the exhibit was not competent.

By Mr. WIPRUD:

Q. Mr. Altwater, you testified that the gross business of Motor Express Company, Inc., was \$2,254,482, and on Exhibit 4 you show two points served by that carrier, namely, Buffalo and Erie. Is it the intent of that testimony to convey to the Commission that this is the gross business conducted by Motor Express Company between those two points?

A. No.

Q. What does it purport to show?

A. It purports to show that Motor Express, Inc., is competitive with Moran between Buffalo and Erie and that the volume that I mentioned was the total volume for the year 1940.

Q. That is, the total volume of all the routes operated by Motor Express?

A. That is correct.

Q. What percentage of the routes of Motor Express is represented by the route between Buffalo and Erie? I will amend that. Percentage of the business, I should say.

A. I don't know.

Q. Can you give us about the percentage of the route operations, route miles, that the Buffalo-Erie route bears to the  
684 whole operations of Motor Express?

A. No; I would not care to guess at that.

Q. You have no information on that. If I asked you the same questions in regard to the Valetta Motor Trucking Company, for which you gave the gross annual figures, and which Exhibit 4 shows serve four points, would your answers be the same?

A. Generally the same; yes.

Q. In other words, the gross figure shown has no relevancy at all to the operations between the points shown on your exhibit?

A. It must have some relevancy.

Q. But it does not reflect the total amount of business between those points?

A. No.

Q. Did you hear the testimony of Mr. Arbour, of Consolidated?

A. Yes.

Q. As I recall his testimony, it was to the effect that your line duplicates all of Consolidated's western operations. Is that correct?

A. That is correct.

Q. What other class I carrier operates over the routes which you and Consolidated both cover?

A. Keeshin, Seaboard, Inter State, Oneida Motor Freight, Red Star, Richards, Spector, Transamerican, Monarch,  
685 Midwest Haulers, Middle Atlantic Transportation Company.

Q. You are speaking now of operations covered both by yourself and Consolidated?

A. That is not what you asked me.

Q. Yes; it was.

Mr. WIPRUD. Read the question.

Exam. BAKER. Supposing we take a recess for 15 minutes, and when we come back perhaps you will rephrase your question. Mr. Altwater does not understand it.

(There was a short recess taken.)

Exam. BAKER. Come to order, please. Mr. Reporter, would you read the question of Mr. Wiprud which the witness was to answer?

Mr. WIPRUD. I will reinstate the question if desired.

Exam. BAKER. It may be well to read it so he can state whether or not he understood it.

(Question read as follows: "Q. What other class I carrier operates over the routes which you and Consolidated both cover?")

Exam. BAKER. Did you understand by that, Mr. Altwater, that Mr. Wiprud wanted the names of carriers which operated over all of the routes covered by Moran and Consolidated?

The WITNESS. No; I did not understand.

Mr. WIPRUD. That was the intent of my question, Mr. Examiner.

686 Exam. BAKER. His answer is obviously incorrect. Perhaps you had better ask a question.

Mr. WIPRUD. I will reframe the question, then.

By Mr. WIPRUD:

Q. Mr. Altwater, what other class of carriers operate over all the routes which you and Consolidated both cover?

Mr. SULLIVAN. I wonder if we can have that made a little bit clearer, because I am a little confused now. Moran and Consolidated do not have an entire duplication of routes. Now, do you mean carriers operating over the entire—a carrier who operates over the entire Moran territory as well as the entire Consolidated territory in this area, or do you mean a carrier who operates over the entire portion of the Moran-Consolidated routes, where those routes of Moran and Consolidated coincide?

Mr. WIPRUD. Just where they duplicate.

The WITNESS. I think essentially this information I have already given is the answer, unless I am completely misunderstanding the question again. May I ask you a question? Perhaps I might clear it up.

Exam. BAKER. Go off the record a moment.

(Discussion off the record.)

Exam. BAKER. Back on the record.

The WITNESS. That is the answer to that question.

Exam. BAKER. Perhaps you had better phrase it a little differently on account of the off-the-record remarks. Mr.

Altwater, is the answer you gave a while ago to Mr. Wiprud's question correct in view of the explanation made that he desires the names of carriers operating over the routes over which Consolidated and Moran both operate? Are the carriers you gave correct?

The WITNESS. That question is not quite clear.

Mr. SULLIVAN. Mr. Examiner, I do not mean to interpose on this, but I think a simple way of stating apparently what everybody is looking for is, Do these carriers cover the Consolidated routes in this territory, since it is conceded that Moran covers all the Consolidated routes? Therefore, if the question is put, Do they run over the entire Consolidated routes in this territory, I think that would be the result counsel is looking for, and perhaps might clear it for the Commission.

Exam. BAKER. Is it correct, Mr. Altwater, that Moran does duplicate all the routes of Consolidated in this territory, in the New York territory?

The WITNESS. Moran does duplicate all the Consolidated routes in the New York territory.

Exam. BAKER. By that I mean west of Albany.

The WITNESS. West of Albany.

Exam. BAKER. Do you care to rephrase your question in accordance with the suggestion of Mr. Sullivan?

688 Mr. WIPRUD. Well, now—

Exam. BAKER. If it expresses your thought in the matter.

Mr. WIPRUD. The question was—and if it is not possible to give it, why, we can pass it—I asked him what other class of carriers operate over all of the routes which Moran and Consolidated both cover.

By Mr. WIPRUD:

Q. Does your answer still stand? Is there a way of determining that, Mr. Altwater?

A. I suppose there would be.

Q. Well, can you state for the record—

Mr. SULLIVAN. Again, Mr. Examiner, I think the confusion arises when he says “which they both cover.” If he means duplicate, I think that is what the witness said he gave.

Exam. BAKER. Do you now understand the question, Mr. Altwater?

The WITNESS. May I explain the question to which these answers should apply as I gave them?

Exam. BAKER. Well, if you understand the question, that is the point we want to clear up now.

The WITNESS. I do not understand that question, no.

By Mr. WIPRUD:

Q. Well, let us put it this way, Mr. Altwater; with the merger of the two lines, that is, Consolidated and Moran, in the New York territory, will there be any other operation that will compete with that merged operation as a whole?

689 A. I don't know of any such.

Q. You spoke of the percentage, I believe, Mr. Altwater, of your east-and-west interchange business. You gave a percentage, I believe.

A. No; I did not.

Q. Well, can you state it for the record?

A. No.

Q. The percentage of your total business that is interchanged east and west; that is, eastbound. I understood your testimony was that you were interchanging with McCarthy. Is that right?

A. East.

Q. Yes. Could you state what percentage of your business is represented by that interchange?

A. About 4 percent.

Q. About 4 percent. You do interchange north-and-south traffic, don't you?

A. No.

Q. You have no interchange going south?

A. Excuse me. We have the Cowan interchange at Binghamton, Baltimore, and Washington.

Q. What percentage of your business is represented by that interchange?

A. Possibly a tenth of one percent, or even less.

Q. It is very small.

A. Very small.

690 Q. Has Moran ever applied for intrastate rights in Pennsylvania aside from that up around Erie?

A: No, sir.

Q. What is your average load factor today, Mr. Altwater?

A. About 75 percent average load.

Q. You spoke of discussions in connection with this unification looking towards the stabilization of rates in the New England territory. Do I understand that those discussions were to the effect that the rates in that territory should be increased?

A. I am sorry, sir. I do not recall testifying as to the stabilization of rates in the New England territory.

Q. Where did you testify? In what territory?

A. As matter of fact, I do not recall testifying as to the stabilization of rates in New York State, if that is what you refer to.

Mr. SULLIVAN. You will either have to speak up or divide your attention. The Reporter has to get it down.

By Mr. WIPRUD:

Q. Well, was there any discussion at all in connection with this unification in regard to the increase of rates in the New York territory?

A. Yes.

Q. Will you explain for the record what that discussion was?

A. The discussions concerned the way in which the Public Service Commission of New York State was undertaking to  
691 regulate the intrastate operators in New York State, and we felt that as a result of such regulation that it was our opinion that there would be stabilization of rates in New York State.

Q. By stabilization, you mean stabilization upward?

A. I would say yes.

Q. How will this unification affect that proposal, Mr. Altwater?

Mr. SULLIVAN. I did not hear that question. Could I have it read?

Exam. BAKER. Would you read the question, please?

(Question read.)

A. I don't know that it will have any effect on that situation at all.

By Mr. WIPRUD:

Q. Well, it was discussed in connection with this unification, was it not?

A. Not in connection with this unification; only in respect to Moran's consideration in respect to the situation, if I have made myself clear. I mean our discussions did not delve into what effect this consolidation would have on the New York situation. Moran only made clear its situation in its opinion as to what the situation was in New York State.

Q. Was that proposal given any consideration in arriving at the basis of exchange of stock?

A. That was one of the considerations, yes.

692 Q. You are a director, are you not, of the Associated Transport?

A. Yes; I am.

Q. You are also a stockholder?

A. Yes, sir.

Q. You are acquainted with the affairs of the company?

A. Yes; I am.

Q. A certain amount of stock, Mr. Altwater, has been subscribed by a list of individuals and concerns shown on Exhibit A-1-D of application in Docket No. 1613. I understand that the purpose of these stock sales was to provide funds with which to prosecute this application and the related application. Is that correct?

A. Generally, yes.

Q. And that the individuals and organizations listed in that exhibit paid cash for the stock, which is set up opposite their names.

A. Yes; with one exception.

Q. What is that exception?

A. I believe it was the case of Mr. Seymour, who paid roughly half in cash and gave his note—secured note for the balance.

Q. Well, I believe the testimony also was that the Transport Company was given certain stock in exchange of certain records. Is that correct?

A. That is correct.

693 Q. Aside from the Phoenix Securities Corporation, do you know of any banking institution that advanced any funds to any of these individuals or organizations for the purpose of purchasing this stock?

A. I know of none.

Exam. BAKER. Mr. Wiprud, I do not know whether the record is clear that the Phoenix Securities Corporation is a banking company.

Mr. WIPRUD. Will the witness state, is the Phoenix Securities Corporation a banking company?

The WITNESS. I don't know.

Mr. WIPRUD. Well, it is one of the stockholders of Associated Transport, is it not?

The WITNESS. That is correct.

Mr. WIPRUD. And that arises out of one-third ownership of the stock of one of the companies involved in this unification.

The WITNESS. Yes.

By Mr. WIPRUD:

Q. Has Moran paid any bonuses during the past several years?

A. Yes.

Q. Will you state for the record what those bonuses were and to whom they were paid?

694 A. 1940—is that correct, or 1939?

Mr. SULLIVAN. Either 1939 or 1940.

Exam. BAKER. Testify of your own knowledge, Mr. Altwater.

Mr. SULLIVAN. I object on the ground that it is immaterial.

The WITNESS. I think in 1939—

Exam. BAKER. Wait a minute. What is the purpose of the question, Mr. Wiprud?

Mr. WIPRUD. Well, I think it goes to the question of operating revenue of these lines. The exchange of stock is based partly on that, and if that is the yardstick we ought to know what has happened to the operating revenue of these lines during the past several years.

Exam. BAKER. I do not see any harm in letting the witness answer. You may answer, Mr. Altwater, if you know.

The WITNESS. I believe in 1939 there were bonuses totaling approximately \$15,000 paid to two officers. I do not recall any in 1940.

By Mr. WIPRUD:

Q. There has been some testimony here, Mr. Altwater, about the savings that might be effected in the reduction of insurance premiums. Do you believe that that can be effected insofar as Moran is concerned?

A. Very definitely I do.

695 Q. Do you believe that the insurance premiums that have been paid in the past several years have been somewhat excessive?

A. No; I do not think they were excessive.

Q. Well, how would the reduction be effected?

A. Probably by self-insurance in part, greater volume of business, the avoidance of duplicate insurance.

Q. How long has the Division Tires Sales Company been in existence?

A. About 2½ or 3 years; somewhere in there.

Q. And, as I believe you stated, the business of that company was the purchase and sale of gasoline and tires?

A. Tires and parts and household appliances—general commodities.

Q. Do you know the volume of business in the past year?

A. I don't know accurately. I think it was about \$300,000.

Q. And of that amount what represented sales to Moran?

A. About \$125,000, possibly \$150,000.

Mr. WIPKUD. That is all, Mr. Examiner.

Exam. BAKER. Any redirect examination, or any further cross-examination?

By Mr. O'BRIEN:

Q. Mr. Altwater, can you tell us if the Moran Transportation Company has a contract with the local union in Buffalo?

A. Yes; we have, sir.

Q. Is the same equally true in other territories at which they operate?

696 A. Yes.

Q. Can you state if any provision has been made with Transport Company to take over and continue in operation for the life of those agreements those particular agreements?

A. I do not know of any such arrangements, but I can say I feel that we certainly will.

Q. But they have not been made any part of the agreement between Moran and Transportation?

Mr. SULLIVAN. Excuse me. Your Honor, I object on the ground that there is no agreement between the Moran Company and the Associated Transportation Company.

Exam. BAKER. What is your question?

Mr. O'BRIEN. I believe, Mr. Examiner, that there is an agreement between Transport to take over the affairs of Moran Transportation. That is why I am here.

Exam. BAKER. The agreement actually is between the Associated Transport, Inc., and the stockholders of M. Moran Transportation.

Mr. O'BRIEN. In the event they will take over the operation of the company if this Commission approves it.

Exam. BAKER. Yes. What is the question of Mr. O'Brien?

(Question read.)

Exam. BAKER. Do you desire to rephrase your question  
697 in view of the explanation that has been made?

By Mr. O'BRIEN:

Q. Has there been any arrangement for the continued life of these agreements, that is, labor agreements, if the application now before the Commission is approved?

A. I would like to answer that in this way, if I may: Since we can't make any definite commitments until the Commission does decide this action, I can't say definitely, but it is certainly my understanding that whatever obligations the Moran Company has, contractual or otherwise, will be carried out.

Mr. SULLIVAN. I will stipulate for the record, to save questioning on that point, that the application and the intent of the Associated Transport is to take over all of the assets and all of the liabilities of the M. Moran Transportation Lines, which would include these union contracts, whether they are an asset or a liability.

Exam. BAKER. Of course, your application states that Associated Transport, Inc., will assume all the liabilities of the constituent companies in the event of consolidation, but have you been authorized by the board of directors of Associated Transport, Inc., to make any definite commitment with respect to the labor contracts?

Mr. SULLIVAN. No commitment beyond the authorization which has been passed to carry out the application which we are making here, which includes the provision to take over all of the assets and all of the liabilities.

698 Exam. BAKER. The record will show. Is there a question before the witness?

The WITNESS. No, sir. I think that was answered.

Mr. O'BRIEN: We got the answer to that, sir, by way of stipulation on behalf of Transport.

By Mr. O'BRIEN:

Q. Now, I believe you testified to the effect that Moran Company operates a convoy system. If I recall correctly you stated that there were two convoys. Now, are there any escorts used with these convoys?

A. What do you mean by "escorts"?

Exam. BAKER. Off the record.

(Remarks off the record.)

By Mr. O'BRIEN:

Q. I mean by that if there are additional drivers who are moved with the equipment.

A. No; there are not.

Q. As I understood your testimony, you would load three tractors on those convoys and move them to another locality where there would be a need for them.

A. The same way as we would move a load of freight: yes.

Q. And I believe you testified further that it was your belief that Transport Company, if approved and in operation by the

Commission, would use some fifty or sixty of those convoys. Is that correct?

A. That would be my estimation; yes.

699 Mr. SULLIVAN. Excuse me. When you used the term "convoys" did you mean a pooling?

The WITNESS. I would say I had reference to pooling, say, 50 tractors that could be moved either by convoys or under their own power, if the occasion demanded.

By Mr. O'BRIEN:

Q. Well, now, there is quite a difference in a movement as to whether we convoy them or move them under their own power.

A. Well, I would not venture a guess as to how many would be moved under a convoy and how many under their own power, except that it would be done as the occasion arises.

Q. Now, what would happen to the men who would, let us say, be assigned to the operation of those tractors?

A. Nothing would happen to those men, sir, because there would not have been any men if we did not have the tractors. This is just an adjunct to our regular service.

Q. The fact that you have those tractors, and the fact that you move those tractors from one location to another—

A. Yes.

Q. Leaves a supply of men at the location from which you move those tractors; isn't that so?

A. No. This would be a pool in addition to whatever the requirements of the Associated would need at the moment. This would be a completely different supply of equipment.

Q. And you believe that fifty or sixty tractors would be necessary for that pool?

700 A. In an operation of the size of Associated, I would say so, yes. I might add that in Moran's case we could have used as many as 25.

Q. How many did you use?

A. Six.

Q. Well, now, where did you mainly house those six tractors?

A. We have three in Buffalo and three in Syracuse.

Q. Now, the three in Buffalo, do I understand that you just keep them at the Buffalo terminal and do not use them?

A. Generally, that is true. I might modify that and say that at the moment that is not the case, but generally that is true.

Q. But there are periods when you use them?

A. Yes.

Q. Now, where do you get the men to man these tractors?

A. At whatever terminal point the—

Q. Well, let us say Buffalo. Let us go back to the Buffalo terminal.

A. The Buffalo men.

Q. Now, when you find the necessity of moving those three tractors, let us say, from Buffalo to Albany, what would happen to those three men that you were using at Buffalo who were handling and operating those tractors?

A. Now, keep in mind there were not three men operating  
701 those tractors in Buffalo. The tractors, let us say, were in our garage. Now, if we had occasion to move them to Albany, we would put one man on one convoy with two or three tractors and move that into Albany, at which time the Albany men would get the work. In other words, by getting the extra tractors it does not deprive work; it gives more work and at the same time helps our service.

Q. Well, wouldn't the Buffalo driver lose his opportunity to work in the transportation of the tractor from Buffalo to Albany?

A. No. If we did not have the tractor, he would not have gotten the work in the first instance.

Q. Well, the fact that you had the tractor made the work available to him and he did get the work.

A. That is true.

Q. All right. Now that he was working, and the tractor has been moved from Buffalo, which is the thing with which he is provided his earning opportunity—

A. That is right.

Q. Those are his tools, so to speak. Now, those tools are moved from Buffalo to Albany and he does not move it.

A. That is correct.

Q. Then, does he lose his earning opportunity?

A. But three men at Albany get the work.

Q. We are not talking about the men at Albany, we are  
702 talking about the period of time between Buffalo and Albany now.

A. You can't have it at both ends. In Albany the Albany men get the work, and in Buffalo the Buffalo men get the work, and in addition to that there is the over-the-road driver who carries the tractors to Albany.

Q. He still loses his earning opportunity between Buffalo and Albany.

A. Oh, you are still on that one question.

Q. Well, answer the question.

EXAM. BAKER. I think this is argumentative. Mr. O'Brien. He stated the facts. You may argue the facts in brief, if you desire. The question is argumentative.

Mr. O'BRIEN. Well, after all, Mr. Examiner, there is a serious question here so far as the employees are concerned, and in the operation of these so-called convoys there is a question of loss of earning opportunity and, after all, that is one of our primary interests in this proceeding, the loss of earning opportunity.

Exam. BAKER. Mr. Altwater has testified to all the relevant facts, or, if he has not, you can bring out additional facts; but so far as the conclusions are concerned, there is no need to argue in questions as to what results from those facts. You may inquire further as to facts only.

Mr. O'BRIEN. All right, sir.

By Mr. O'BRIEN:

703. Q. Now, do you know of any action taken by Associated for the further development of this convoy system?

A. None beyond the stage of mild discussions.

Q. There were some discussions?

A. Yes. I did mention it.

Q. There were no official actions taken?

A. No.

Q. Now, in the matter of the changing of tires, as I understand your testimony, between Moran and McCarthy—I believe it was McCarthy you testified to.

A. That is right.

Q. Now, in the case of the changing of those tires, are extra tires carried on the trucks operated by both of these operators?

A. No. Moran does not carry spare tires and; as far as I know, McCarthy does not, either. As far as I know, we don't carry any spare tires.

Q. Then, you would not know whether the tire changing was done through the drivers or other employees of the McCarthy or Moran Company?

A. I don't know.

Q. Now, with reference to the Acme Fast Freight, do they own and operate any equipment of their own? Do you know?

A. I don't know whether they own equipment of their own.

Q. Would you say that all of their equipment was leased equipment?

704. A. Generally I would say that is the case.

Q. And the same would be true of Liberty?

A. Yes.

Mr. O'BRIEN. That is all.

Mr. SULLIVAN. I have one question.

Redirect examination by Mr. Sullivan:

Q. Mr. Altwater, with reference to this tractor that Mr. O'Brien spoke of, which would be taken away from Buffalo and go to Albany, if there was any work for the tractor at Buffalo would it be sent to Albany?

A. No.

Mr. SULLIVAN. That is all.

Exam. BAKER. Witness excused.

(Witness excused.)

Mr. SULLIVAN. Mr. Evans.

SAMUEL EVANS, JR., being first duly sworn, testified as follows:

Mr. SULLIVAN. Before we start, Mr. Examiner, I wonder if we could have a night session tonight to get rid of two or three shipper witnesses who do not want to come back?

Exam. BAKER. How many witnesses do you have?

Mr. SULLIVAN. Well, I have three—four that must go back tonight. I will be very short with them. They must go back. And I understand Mr. Cochran has one that must go back tonight.

If we do not put them on tonight we cannot put them on at all. I think you will find my questions very short.

Exam. BAKER. I will be glad to accommodate you by holding a night session, but let us see how far we progress with this witness before we determine on the time.

Mr. SULLIVAN. All right.

Mr. O'BRIEN. Off the record.

(Remarks off the record.)

Exam. BAKER. You may proceed.

Direct examination By Mr. SULLIVAN:

Q. Mr. Evans, will you give your name and address to the Reporter, please.

A. My name is Samuel Evans, Jr., 155 East Forty-fourth Street, New York.

Exam. BAKER. Is that New York City?

The WITNESS. New York City.

By Mr. SULLIVAN:

Q. Your business is what, Mr. Evans?

A. General traffic manager with the Robert Gair Company, subsidiary and affiliated companies.

Q. And is that company a national concern?

A. Yes.

Q. You have plants in a number of locations throughout the country? I am not asking you the names.

A. We have roughly 19 plants in the United States.

Q. And is the freight which flows into and out of those plants under your jurisdiction?

706 A. Yes, sir.

Q. Could you tell us generally what the nature of the products is that your company deals in?

A. Paper, pulp, and fiberboard, paper boxes, fiberboard shipping cases.

Q. Could you give us an estimate of the gross tonnage moved to and from your plants per year?

A. Approximately 900,000 tons per year.

Q. And could you give us an estimate how much of that moves by rail and how much by motor truck?

A. I should say 65 to 70 percent by rail and the balance by motor truck.

Q. You are familiar with the companies in this proposed unification or merger and with the territory they serve?

A. In a very rough general way; yes, sir.

Q. Do you have occasion to use motor carriers and rail carriers in that territory?

A. Yes, sir.

Q. And as between motor and rail carriers in that territory is the break-down substantially similar to which it is nationally?

A. That is right.

Q. Now, could you give us an estimate of the amount of freight in that territory which moves by motor truck in the course of a year?

A. I should say that 75 percent of our total tonnage moves  
707 in the territory east of a line drawn through Buffalo, Pittsburgh, Wheeling, and directly east of the Atlantic Seaboard. Roughly, 60 to 65 percent of that moves by rail and the balance by motor truck.

Q. Do you have occasion to use some or all of the carriers concerned in this application?

A. We use to a greater or lesser extent all of them, with the exception of two, I believe.

Q. Would you name those two?

A. Southeastern and, I believe, they call it, the Transportation, Inc.

Q. Transportation, Inc.?

A. Yes.

Q. Do you have occasion to use motor carriers by truck other than the carriers concerned in this application?

A. Yes, sir.

Q. Could you tell us how the tonnage which you move by motor truck in this area would be divided as between the carriers concerned with the application and carriers who are not a part of it?

A. Speaking as to common carrier truck operations, approximately fifty-fifty.

Q. In addition to common carrier truck operations, you move part of your freight by contract carrier operators?

A. That is right, sir.

708. Q. And those would not be, of course, involved.

A. They are not involved.

Q. You have been a traffic manager for how long, Mr. Evans?

A. I have been with the Robert Gair Company approximately 26 years, and general traffic manager for approximately 20 years.

Q. Assuming, Mr. Evans, that as a result of this consolidation, if permitted by the Interstate Commerce Commission, benefits would accrue, such as the speeding up of service, the reduction of loss, O. S. and D. claims, increased efficiency with respect to following or tracing shipments, reduction of billing costs to the shipper, simplification of his accounting methods with respect to bills, reduction of the time required by him to interview solicitors, less congestion at the shipper's platform, can you tell us whether or not, from your experience of 26 years as traffic manager, or connected with the traffic department of your concern—as to whether that would be a desirable thing or a benefit to your company?

A. Well, that is very obvious, sir; it would be.

Q. And from your same experience to which I have just referred, can you tell us whether or not, in your opinion, it would be a benefit to other shippers to whom the service might be available?

A. I should think it would, and to the public generally.

709. Q. You feel the granting of this application by the Interstate Commerce Commission is desirable?

A. I believe it is; yes, sir.

Q. You were familiar with the application last year, or generally the merger proposed in MC-F-1223, were you not, the proposed merger last year involving the Transport Company and certain carriers, some of whom or all of whom are involved here?

A. I know something of it; yes.

Q. When that was proposed, did you make some study of some of the operations of the carriers proposed to be merged in certain parts of the territory with which you are concerned?

A. Yes; I did.

Q. And at that time can you tell us what, if anything, you had done in attempting to put into effect the service which might then be offered with respect to your company?

A. We have had a problem over a period of time with reference to the movement of some of our products from the Niagara plant.

to destinations in Pennsylvania. It appeared that that particular merger, if it had gone through, would solve our problem through an interchange of equipment between Moran and Arrow Carrier at Binghamton. I had talked with the Moran people about it, and also with the Arrow Carrier, and felt reasonably well satisfied if the operation—if the merger had gone through our problem would have been solved.

710 Q. And after that merger was denied, did your problem still remain?

A. It is still with us.

Q. Would the approval of this application solve that problem?

A. I expect it would, sir.

Q. Has your company a policy with respect to using a single motor carrier in a given territory or using more than a single motor carrier in such territory?

A. We have a very definite fixed policy of using more than one motor carrier—motor common carrier from each one of our plants to the localities to which we have substantial movements.

Q. Assuming that this application were to be granted; would your policy in that respect change?

A. No, sir.

Q. Are you fearful that in the event this application were granted, and in the event, through some reason or other, stoppage of the flow of freight over the unified lines should occur, that you would be left without available service to handle your products?

Mr. WIPRUD. Just a minute. Mr. Examiner, is he assuming a condition that exists?

Mr. SULLIVAN. I am not assuming a condition that exists, I hope.

Mr. WIPRUD. You said "stoppage of the flow of freight over the unified lines."

711 Exam. BAKER. I believe the question is clear, Mr. Wiprud. Do you understand the question?

The WITNESS. I think I do; yes, sir.

Exam. BAKER. You may answer it.

Mr. SULLIVAN. The Examiner has ruled that you may answer.

A. We are not dependent on these lines now, and I do not imagine we would be if that condition came into existence. There are other operators who would handle our tonnage.

By Mr. SULLIVAN:

Q. Would they continue to handle tonnage in the future—the other operators?

A. They would still continue in business, absolutely.

Mr. SULLIVAN. I think you may ask—

By Mr. SULLIVAN:

Q. Oh, have you anything that you would like to say in addition?

A. I think not, sir.

Mr. SULLIVAN. That is all.

Mr. WIPRUD. No cross.

Exam. BAKER. Witness excused.

(Witness excused.)

Mr. WIPRUD. Mr. Sullivan, just a minute. Mr. Examiner, I would like to add the name of David Grant Macdonald, special attorney of the Anti-Trust Division, to the appearance for the Anti-Trust Division of the Department of Justice. It is necessary for me to leave. I understand there is to be a night session, and he will represent the Department at the session this evening.

Exam. BAKER. Mr. Macdonald is present in the hearing room?

Mr. MACDONALD. Yes, sir.

Exam. BAKER. Mr. Macdonald, are you admitted to practice before the Commission?

Mr. MACDONALD. No; I have not been admitted.

Exam. BAKER. Have you appeared in any cases before the Commission?

Mr. MACDONALD. No; I have not.

Exam. BAKER. You may participate in this one. I would suggest that if you desire to participate in any hearings in the future that you make application.

Mr. MACDONALD. Yes; I will. Thank you, sir.

Exam. BAKER. Mr. Macdonald, will you also fill out an appearance slip for the Reporter?

Mr. MACDONALD. Yes.

FRANK KORINEK, being first duly sworn, testified as follows:

Exam. BAKER. State your name and address for the record.

The WITNESS. My name is Frank Korinek; business address is 60 Hudson Street, New York City.

Direct examination by Mr. SULLIVAN:

Q. And your business is what?

A. I am traffic manager for Lamont, Corliss & Company, who are sales agents for the Peter Cailler Kohler Swiss Chocolate Company, and the Ponds Extract Company.

Q. I forgot to ask this of Mr. Evans, but I will ask you: Are you a member of any traffic organization or organizations?

A. I am a member of the Drug & Toilet Preparation Traffic Conference, headquarters in New York, and I also act as chairman of the Traffic Committee of the Association of Cocoa & Chocolate Manufacturers of the United States.

Q. You have engaged in the business of traffic for how long?

A. Twenty-three years.

Q. Would you give us a statement of the amount of tonnage you are concerned with in your capacity during the course of a year?

A. Our plant at Fulton, New York, that is, the chocolate works, handles inbound approximately one hundred million pounds, and the outbound tonnage is equivalent, or another hundred million pounds. At the plant at Clinton, Connecticut, Ponds Extract Company, the inbound and outbound tonnage is approximately forty million pounds.

Q. Are those the only two plants you have in the territory involved in this matter?

A. That is correct.

Q. You have, however, some other plants somewhere else, or are those your two main plants?

714 A. Two main plants; that is right.

Q. Now, do you have occasion to use motor-truck transportation?

A. We do.

Q. And do you also use rail?

A. That is right.

Q. About how would you say this tonnage that you have referred to is divided as between those two means of transportation?

A. Well, the outbound tonnage, we ship approximately seventy per cent to is divided as between those two means of transportation?

Q. Do you have occasion to use the carriers involved in this proceeding?

A. Yes; we do.

Q. All of them, or about how many?

A. About four.

Q. Would you name those four for the record, please?

A. We use Consolidated, Horton, McCarthy, Moran.

Q. Do you also have occasion to use carriers in your shipments from this territory other than those whom you have just named?

A. Yes; we do.

Q. How would you say the tonnage you have available for motor carriers in that territory is divided between those carriers?

A. I would say about 65 percent of the tonnage we ship is given to carriers who are not involved in this combine.

715 Q. Assuming—or did you hear my question to Mr. Evans in which I assumed certain advantages to the shipper?

A. Yes; that is right.

Q. You recall that? You have it generally in mind?

A. Yes.

Q. I am not asking you to repeat it.

A. No; but I would like to just answer that question by giving one specific illustration as to the benefit to our company and locality. Both at Clinton, Connecticut, and Fulton, New York, we are more or less smaller cities, off-line points, they would probably be called, and as such we do not have the proper transportation facilities. In other words, if we were to ship from Fulton, New York, to points in the south at the present time, we would have to use two or more carriers. And the same holds true on shipments from Clinton, Connecticut.

Now, we hoped that the previous combine that was contemplated would have gone through to have enabled us to have had a better service out of these more or less outlying points. But unfortunately it did not. And I stated at that time that a combine like this is right up our alley from the shipping points of where our factories are located.

Q. Then, I gather that the substance of what you say is that you in behalf of your firm are in favor of the granting of this application?

716 A. That is correct.

Q. Do you feel that the benefits from the granting of this application would extend to the shipping public and the public generally?

A. Yes. Naturally there would be other manufacturers in the same vicinity.

Q. Are you fearful that there would be any lack of competition in the territory with which you are familiar if these companies were put together?

A. No; I am not.

Q. Have you anything else you wish to say, Mr. Korinek, with respect to this matter that I have not asked you that you feel is important to your company?

A. The main reason is to get a through service from the territory where our factories are located into the southern points through expedited service.

Q. You feel you suffer from lack of such service at the present time?

A. We do. Absolutely we do at the present time.

Mr. SULLIVAN. You may inquire.

## Cross-examination by Mr. MACDONALD:

Q. Mr. Korinek, is it?

A. That is right.

Q. At the present time how do the rates which you pay for your truck transportation to points in the southern part of  
717 the seaboard compare with your rail rates?

A. We have through rail rates from Fulton, New York, to all points in the south. Now, the truck rates are based on combination rates from New York that would create the cheapest rate. Of course, we are in the hopes of having a through rate by this Associated Transport if and when granted.

Q. You expect the rates to be lowered, then, for through shipments after the Association is permitted to be formed?

A. Oh, absolutely.

Mr. MACDONALD. That is all.

Mr. SULLIVAN. May I ask another question?

## Redirect examination by Mr. SULLIVAN:

Q. Part of your duties as traffic manager is to do what you can in that capacity to reduce rates?

A. That is right; absolutely.

Q. And when you feel that a rate is too high, a rate by a motor carrier is too high, what is there to do about it, or can you do about it?

A. Well, we discuss it with the motor carriers and try to arrive at some satisfactory rate. Of course, if the cost is too high they can't reduce the rate. If they are enabled to reduce the cost, they might then be enabled to reduce their rates.

Q. And you are familiar with the machinery that is provided by the Interstate Commerce Commission with regard to  
718 complaints to shippers with respect to rates?

A. That is right. If we cannot arrive at a proper solution, we then take it up with the Interstate Commerce Commission.

Q. And you have been doing that yourself personally for a good many years with respect to rates, have you?

A. We have been doing that through the Associations which I mentioned.

Q. You have a group or Association—

A. That is right.

Q. Of which you are a member, to protect the interests of the manufacturers?

A. That is right.

Q. With respect to getting what they feel are proper rates?

A. That is correct.

Mr. SULLIVAN. That is all.

Exam. BAKER. Witness excused.

(Witness excused.)

Exam. BAKER. Off the record a moment.

(Discussion off the record.)

Mr. SULLIVAN. Mr. Vayo.

CHARLES H. VAYO, being first duly sworn, testified as follows:

The WITNESS. I reside at 343 State Street, Rochester, New York. I am the general traffic manager of the Eastman Kodak Company and its subsidiaries.

719 Direct examination by Mr. SULLIVAN:

Q. How long have you been engaged in the business of traffic manager or been the traffic part of your business?

A. About 12 years.

Q. And are you a member of any association or associations dealing with traffic?

A. Well, I am interested in several organizations, if that is what you have in mind.

Q. That is what I have in mind.

A. I am the alternate chairman of the Atlantic States Shippers Advisory Board; I am a committee member in connection with the National Industrial Traffic League; I have been chairman of the Transportation Council of Associated Industries; and I am now a member, and I have been chairman, of the Transportation Committee of the Rochester Chamber of Commerce; and I am a director of the Associated Traffic Clubs of America.

Q. I believe you stated that you were employed by the Eastman Kodak Company; is that right?

A. That is correct.

Q. And they have places of business in the territory involved in this combination of truck lines we have been discussing here?

A. That is correct.

Q. And the plants are located where?

720 A. We have several plants in Rochester; we have plants in Peabody, Massachusetts; we have plants in Chicago—of course, that is probably a little west; and we have plants in Kingsport, Tennessee.

Q. And would you give us a figure of the gross tonnage with which your company is concerned in the course of a year—movement?

A. Well, I would estimate our tonnage somewhere in the neighborhood of 500,000 tons.

Q. Do you use carriers other than motor carriers?

A. Many of them.

Q. Rail carriers?

A. Rail carriers, water carriers.

Q. Could you give us an estimate as to how the tonnage which you turn over to rail carriers and motor carriers is divided between such classes of carriers?

A. I think a fair percentage would be about 60 percent rail and 40 percent trucks.

Q. Would you give us an estimate of the amount of tonnage you have to be transported in the territory involved in this application?

A. I do not believe I could give you a figure that would mean very much; it would just be a guess.

Q. Is it a substantial amount of tonnage?

A. It is a substantial amount of tonnage; yes.

721 Q. Do you have occasion to use the carriers with whom we are concerned here as well as carriers who are not a part of this proposed unification?

A. Oh, many of them; yes.

Q. About how many of the eight carriers with whom we are concerned here do you have occasion to use?

A. Well, in any volume I would say perhaps Moran, Consolidated, and McCarthy. I think those three would—

Q. What can you say as to whether you give more tonnage to these three carriers you have named or more tonnage to carriers in the territory other than those three carriers?

A. I don't think I understand the question.

Q. Well, I will put it this way. Of the amount of tonnage you give to motor carriers in the territory we are discussing here, could you give us the percent or the relationship of such tonnage as you offer to the carriers involved in this merger and carriers who are not involved in it by motor?

A. Well, if I understand your question, we would give a substantial portion of our tonnage to the carriers involved in this proposed merger.

Q. That is, you presently do?

A. We presently do. But there are many, many other carriers that are not being considered here at all that are now getting and would continue to get.

722 Q. And would that latter class of carriers get more than the carriers involved in this application?

A. I think they would; yes.

Q. Did you hear the question I put to Mr. Evans in which I listed certain benefits, and assuming that those benefits would be the result of the approval of this merger, I asked Mr. Evans

if he felt that was in the interest of his company? Did you hear that?

A. I think I was out of the room at the time.

Q. All right, then, I will put the question to you directly, sir.

Assuming that the Interstate Commerce Commission approved this merger, and assuming that as a result of the merger there was a speed-up of service between various points; that the O. S. and D. claims were reduced both in number and as to severity; that the bookkeeping procedure of shippers would be simplified as a result of having to handle a lesser volume of bills; that the number of solicitors you would have to interview in order to cover a given number of points was reduced; that you could use truck service to a greater number of points without having to have so many trucks at your platform; would you feel that the action of the Commission in approving this merger was a proper one and one that would be for the benefit of your company?

A. Yes, sir.

Q. Would you feel that such benefits would also accrue  
723 to the shippers generally within the territory?

A. Yes; I do. As a matter of fact, I am interested in this merger not only from the standpoint of Kodak Company's interest but also to our thousands of dealers who, after all, have to reship our goods, and, in a sense, we have to do their job for them.

We take the position that service is the thing that we are interested in first of all, the sooner we get the goods to our dealer to get on the shelf and the sooner he sells them and gets his money, the sooner we get another order. So it is to our interest that such service is available.

I think, too, that, after all is said and done, the trucking industry is in its infancy. It has had a mushroom growth, so to speak. And I think a measure of this kind not only merges equipment and service but it merges the minds and the thought and the experience of some of the leading industrial leaders in the trucking industry; and when that is accomplished it is bound to result in a much better service. Certainly it is going to result in a managerial standpoint, such as maintenance cost, insurance, terminal costs are all going to go into the picture and have its effect.

Now, whether that will mean cheaper rates we are not interested particularly. In other words, we are not interested in cheap  
724 rates. We are interested to the extent that by that combination, by the sources of this merger, that we would be able to get more for our money in the way of service. I do not mean to say that we are not interested in rates; we are interested in rates to the point that they are fair—they are fair to us and they are fair to the other fellow. We are not interested in cheap rates.

Q. Mr. Vayo, the associations to which you belong, which you enumerated, are pretty well conversant with the ways of keeping rates at the place where they reasonably satisfy you gentlemen; is that right?

A. That is right.

Q. And you feel there has been a lack of stability in the motor truck industry in the past?

A. Yes; I think a merger of this kind, as I say, bringing together the heads, leading heads of some of our trucking industries, will do that very thing—will stabilize the industry. That is what it needs today.

Q. Are you concerned that there would be any lack of competing lines available to you by way of holding this merged outfit in place?

A. No; not at all.

Q. What do you say as to your feeling with respect to any rights you may feel that you as a shipper and the rest of the shippers have to have truck line service improved and extended to points where you may have occasion to ship?

725 A. Well, I don't think I understand your question. You better rephrase it.

Q. Well, maybe I got involved, so I will try to rephrase it. Do you as a shipper feel it is the right of the shipping public to have mergers of this kind put into effect, assuming that they are done in a proper manner?

A. Yes; I think that is the only way the trucking industry is going to survive. We have had a similar operation east and west. It has been successful. It seems to me that one going north and south is going to be equally successful.

Q. Have you had occasion to use the systems running east and west?

A. Oh, yes.

Q. And do you find that that is more satisfactory than the situation was before there were such systems?

A. Oh, much more. If you can make a shipment starting from Portland, Maine, and take it down to Pensacola, Florida, certainly it is not to be compared with one you have transferred a half dozen times before you reach there, and Lord knows whether you get your merchandise there.

Q. Have you anything more you would like to add to your testimony?

A. I don't think so.

Mr. SULLIVAN. That is all the questions I have of Mr. Vayo, sir.

726

Cross-examination by Mr. MACDONALD:

Q. Mr. Vayo, mentioning the east-west lines, which ones on it did you have in mind?

A. Well, take, for instance, Keeshin Lines.

Q. Would you say that is considered generally a successful operation today?

A. Well, I am not talking about it financially, whether it is a success financially, so far as Keeshin's operation is concerned. Certainly in some respects it has been successful so far as the shipper is concerned.

Q. Weren't you speaking, in your talking about stabilization, about the trucking industry?

A. That is true.

Q. In the territory in which you are served by members of this proposed association, namely, Moran and Consolidated, and McCarthy, if this association is approved and goes into existence, what other carrier will carry an equal or greater amount of freight in that territory?

A. Well, I should say—for instance, out of our Kingsport, Tennessee, plant we have got the Mason-Dixon Line—

Q. Excuse me. I am referring to the New York and New England States solely, because those are the only states in which Moran and Consolidated and McCarthy operate.

A. You are talking about New England.

Q. The New York area and New England.

727 A. Well, I think, for instance, if we had very larger operation today, that the Richards Motor Freight Lines—

Q. My question was: Who will get the bulk of your business in that territory?

A. I can't tell you that, except to say that the man that gives us the service will generally get our business.

Q. You are interested primarily in service rather than rates?

A. Service comes first; yes, so long as the rate is reasonable.

Q. Do you know of any other trucking system existing today which would compare in extent of operation with the proposed one?

A. No. That is why I am interested in the proposed one, because there are none.

Mr. MACDONALD: That is all.

Exam. BAKER: You are excused.

(Witness excused.)

Exam. BAKER: We will take a recess.

(Whereupon a short recess was taken.)

Exam. BAKER: Come to order, please.

V. R. TUPPER, being first duly sworn, testified as follows:

DIRECT EXAMINATION

The WITNESS. My name is V. R. Tupper. I am general traffic manager of Remington-Rand, Inc., and subsidiary companies, headquarters at 465 Washington Street, Buffalo, New York.

By Mr. SULLIVAN:

Q. Mr. Tupper, are you a member of any traffic groups or associations, or an officer?

A. I am a member of the National Industrial Traffic League; I am a member of the Highway Committee of that association; I am on the Transportation Committee of the Buffalo Chamber of Commerce; I am chairman of the Transportation Committee of the Typewriter Industries; I am a member of the Niagara Industrial Traffic League; I am a member of Associated Industries of New York State; and some other bodies.

Q. And your position with Remington-Rand, you stated, is—

A. General traffic manager.

Q. You have occupied that position for how long?

A. Well, I have occupied that position for approximately 10 years. Before that I was traffic manager of the Remington Typewriter Company.

Q. You have been engaged in traffic matters—

A. For about 25 years.

Q. You are familiar with the names of the companies involved in this proposed merger or consolidation?

A. I am, sir.

Q. And are you familiar with the territory that is covered by their operations?

A. I am.

Q. Would you state the locations of the plants of your company in this territory?

A. We have plants at Tonawanda, New York, plants at Ilion, New York, plants at Bridgeport, Connecticut, Elmira, New York, Brooklyn, New York, a plant at Atlanta, Georgia, in the territory covered. We have other plants outside of this territory.

Q. Would you give me the gross tonnage with which you in the capacity for your firm are concerned?

A. Approximately 700,000 a year—700,000—million pounds a year.

Exam. BAKER. What was that?

The WITNESS. Wait a minute. 700,000,000 pounds a year, yes; that is right.

By Mr. SULLIVAN:

Q. You use trucks in your transportation?

A. We do.

Q. And rail?

A. We do.

Q. How would you say the division between those two transportation—

A. About 70 percent rail and 30 percent truck.

Q. You use trucks extensively in the territory?

A. We do, on account of the distance involved and the service.

Exam. BAKER. Will you please wait until he completes his questions?

The WITNESS. Excuse me, sir.

730

By Mr. SULLIVAN:

Q. And when you say "on account of the distance involved" what do you mean by that?

A. Well, I mean that we find it for a shorter distance, say, within a range of 300 miles, 400 miles, that we get a better service by truck than we do by other means of transportation.

Q. Do you have occasion to use the trucking companies involved in this—

A. We do.

Q. Do you use trucking companies other than those companies?

A. Yes; we do.

Q. How would your freight be divided as between the two groups?

A. Oh, I don't know that I am prepared to answer that question. We use many of the carriers on that list.

Q. You mean Exhibit—

A. Yes; on that exhibit.

Q. Four?

A. We use many of the carriers involved there.

Mr. SULLIVAN. I wonder, Mr. Examiner—I do not recall whether you received this in evidence or not.

Exam. BAKER. It was received in evidence.

Mr. SULLIVAN. All right.

I am referring now to applicant's Exhibit 4.

By Mr. SULLIVAN:

731 Q. If this application were granted, would you continue to have occasion to use companies not involved in the application?

A. Oh, definitely.

Q. What are some of the advantages, Mr. Tupper, which you feel would flow to your employers from the granting of this application?

A. Well, as an illustration, if we wanted to ship a truckload of furniture from Buffalo, New York, steel filing cabinets, or products of that kind, we would probably not be able to use a truck movement, because there would be an interchange, or considerable interchanges at various points along the route, say, from Buffalo to Atlanta, Georgia. If we wanted to ship a truckload, sixteen or twenty thousand pounds, whatever the minimum might be, we would probably ship that by rail. We would take the car and put it on our siding, see that the furniture was placed in it properly and then when the car arrived at destination it would be unloaded there, the furniture not having moved in transit. Obviously, if we put it on a truck that did not run through from Buffalo to Atlanta, we would be subject to considerable damage, and also probably short shipments.

Our experience with transfers has been particularly a bad one. We use lines where we ship truckloads from one point to another, the truck backs up and takes, say, twelve hundred feet of merchandise, puts it in, takes it to the transfer point, the transfer carrier puts it on a thousand foot body, which it doesn't  
732 it in, so they leave the two hundred feet off the body and trust to God it will get down there.

So we have had some movements where it has been quite essential that we did not have that transfer; and those are the things we find. We, as a company, endeavor to use lines that have a financial stability. I don't know that size means that, but it possibly means that to us.

Now, we operate, as an illustration, from Benton Harbor, Michigan, where we have a plant, to New York City via the Inter State Freight Lines. We operate from Connecticut into Chicago and St. Louis via Spector. And we think that it is a decided advantage if we can get one line that will make a through movement from one point to another.

We ship—as an illustration, if we are shipping to Denver, Colorado, out of Buffalo we will load it onto a certain company and they will take it to Chicago and transfer. Well, it is a rush order, and our Denver office want it. So they say, "Who did you ship it by?" Well, we know who shipped it to Chicago, and we may even specify the route beyond, but half the time a carrier doesn't pay attention to the route we prescribe. And then there are calls and wires, "Where is it?" So we have to get the originating carrier. If we have one company—take, as an illustration, Akers from Buffalo to Chicago. We know he is going to deliver it. We

733 look up the routing, and our branch can wire or contact such and such an office.

We believe the merger—take the question of claims. We ship via two carriers. The originating carrier takes the material. It is damaged at its destination. We file claim with the originating carrier, and they got a clean receipt, and they tell you to go to the John Brown Company. So the John Brown Company isn't worth much. So we go after them, and we have a grand time trying to collect our money on that basis.

If we go to a rail carrier—if we file a claim with the New York Central as originating carrier, there is no difficulty at all, no matter how many carriers are involved. We don't have that kind of thing.

We believe that the merger will develop a better personnel. We have found that small operators don't have proper traffic men working for them. As an illustration, we had a case the other day where we had a commodity rate from one point to another point. The commodity rate was cancelled out. I received a copy of the tariff, and I called the carrier, talked to him, and I said, "Well, we don't mind this rate going out if it is not a compensatory rate, but we think it is only fair that we should be told that such action is going to take place, and we should be given an opportunity to defend our position on these rates." I said, "Were you at the meeting?" He said, "Yes."

734 "What action did you take?" He said, "I didn't know they were putting it out." "Why didn't you?" "I didn't understand it." There is an operating manager attending a meeting that doesn't know anything about traffic. And the rate is out.

Now, in our dealings with the larger companies we have found that they necessarily will tell us when these rates are going to be attacked or going to be out and tell us whether we can discuss the matter, especially in these rate bureaus, and we have an opportunity to present our case. I think that is another thing that will be accomplished.

Q. And had you known about this change in the rate in the illustration you have given you would have taken such action?

A. Oh, absolutely, definitely, right away. I mean we would have tried to prove it was compensatory, whatever the case might be.

Q. Of course, you still could take action?

A. Well, we are going to take action. We are going to ask for a docket and a hearing. But after the rate is thrown out it is a little more difficult to get it in again.

Q. Excuse me. I do not mean to divert, but I want to touch on another point here.

A. Yes.

Q. I understand your experience with the larger carriers is that they treat you fairly in respect to such matters.

A. Definitely. We have had carriers tell us that they couldn't handle the business when certain rates were in. We have argued across the table, and we would try to arrive at a fair basis. And the larger carriers, we have found that they have competent and able traffic men that understand the mechanics. And the small carriers, they may make appearances at rate hearings, but their knowledge of traffic is not sufficient to enable them to protect our interests.

Q. Then, I gather that it is your feeling that the mere fact that a carrier is large does not mean that it is going to push the rates up all the time?

A. No, definitely not. Definitely not. Of course, you have got your competition that will prevent that, and, of course, you have got your Commission, that the shipper has his rights before it to take these cases to.

Q. I ask you this question, Mr. Tupper, because it occurs to me I don't think it has been touched on before: Assume for a minute facts such as these: That there was an operation brought about by virtue of this consolidation, we will say, between Buffalo, New York, and Atlanta, Georgia—just to pick a good long one—and as a result of the merger just assume the fact, if you will, that there were no other truck lines running in that territory. Have you a way to protect yourself against any unfair practices by this line running under those assumed conditions by reason of the volume of business you give to the same line for its local business around your territory?

A. We would have ways of protecting ourselves with other means of competition. In other words, we would have rail competition; we would have carloading competition.

Q. You are also in position to divert from a carrier who does not treat you fairly, in your estimation—to divert from the tonnage right around your territory, or on shorter hauls?

A. I might say that the movement of our products into the south by motor carrier is not particularly large, not compared to other territories, for the very reason that where these carriers—as an illustration, Horton Motor Lines don't have connecting carriers out here in the territory that we serve, and we, of course, can use a carloading company that goes in there, take advantage of motor carrier, rail, whichever they see fit to do. The fact that this one line haul, as an illustration, from Buffalo to Atlanta would enable us to ship in one body, I think would increase the business that would move via motor carrier.

Q. Let us take the situation from Buffalo to Atlanta. When you have freight to send there how do you transport it?

A. As a general rule, the carloading companies, Universal, Acme, or National—it is one of those companies—and if we have a complaint, we go to one party; we don't go to somebody and they go to somebody else. And I think we could develop more business by motor carriers, because obviously the carloading companies, as an illustration, might take that freight by motor truck to Cincinnati, or rail to Cincinnati and then by motor truck to Chattanooga, or some place, and then by motor truck over to Atlanta, Georgia.

Q. Are you saying, Mr. Tupper, that the granting of this application would put the motor carriers involved on a competitive basis with the carloading companies?

A. They would probably give a better service. What we are trying to prevent is this interchange of freight.

Q. Are there other advantages that you feel might be gained from the granting of this application that you have not already told us about?

A. Well, I think I have cited the main advantages: Through bodies, dealing with responsible companies, proper traffic personnel—

Q. You feel there would be—excuse me.

A. We, of course, and a good many other industries today, have built their shipping rooms and shipping facilities on the basis of rail shipments, and we have had to curtail the number of operators we use at some of our plants. We may only have a two or three door platform. Now, if we try to spread that over twenty carriers they must all wait. Now, if we can centralize on a certain number of carriers that can give us a through service, we save money for the operators and also for ourselves.

Q. You feel that there would be any speed up of the service between various points?

A. Well, I should certainly think that a lack of interchange would necessarily mean a faster service.

Q. Well, have you had experience in shipping where there has been an exchange, or an exchange has been necessitated, and also shipping to equal distances where the exchange was not required?

A. Oh, yes.

Q. And what has been your experience with respect to the comparative speed?

A. Well, I would say that 80 percent of the time they were probably equal. The other 20 percent the interchange bogs down woefully.

Q. And is it important to you to have a reasonable period that seasonable freight is going to get to a particular point?

A. It is very definitely today.

Q. What can you say as to the advantage to you as a shipper which might accrue through direct wire service between the terminal points of the carriers?

A. I should think that would be a very definite advantage.

I mean if we use a carrier that originates freight at Buffalo, and we are shipping to Atlanta, as an illustration, I would call up the office of, say, Moran Transportation Lines, and I would say, "Here, this shipment was supposed to be down there last Thursday and I have just had a wire from Atlanta that it has not arrived. What is the story?" I expect through direct wire service they will be able to get the answers. They would immediately contact their interchange company.

Q. Anything else you care to add?

A. Nothing.

Q. Are you fearful that a merger such as this would result in the monopoly of the truck line business?

A. I don't see how it possibly could. I mean with the number of carriers operating today, I don't think they are all going to pull up their tents and go out of business just because you are coming along with this merger.

Q. Do you favor the granting of this application? I take it you do.

A. I think from a service and from a shipping standpoint that it would have very many advantages.

Q. You feel that is true with respect to shippers other than yourself?

A. Very definitely.

Q. What do you say about that with respect to the general public?

A. Well, I think that they would have the same advantages we have.

740 Mr. SULLIVAN. I think that is all the questions I have.

Cross-examination by Mr. MACDONALD:

Q. Mr. Tupper, you said you felt that other shippers would share the advantages with you.

A. That is just my opinion.

Q. Do you know what percentage of motor carrier freight is carried over a distance longer, say, than 300 miles?

A. I would not have any idea on that, sir.

Q. Then, as to the other members of the public, for whom you anticipate advantages, that is more or less limited to those who would be interested in what is called long hauls?

A. Yes.

Q. You stated, I believe, that you felt that there would be no danger of rate control by such a large company as the proposed one because the competition, among other factors, would prevent it.

A. Well, what I meant to imply was that I don't think the shipping public need to fear that the rates are going to be out of line because there is a lot of machinery to take care of that situation, just the same as there is with the rails today.

Q. What machinery do you have in mind?

A. We have the Interstate Commerce Commission; we have rate bodies.

741 Q. These rate bodies are shippers?

A. No. You have your motor carriers. I think you have your rails. You have your classification committees. I think these bodies, as a general rule, especially in the rails, are endeavoring to give the shippers a fair and proper rate; and I think as the motor carrier industry develops that they must of necessity follow the same practice.

Q. Do you believe that in the absence of competition in any particular locality that there still would be an effective check on the rate control or manipulation by large—

A. I can't figure that picture. In other words, I can't figure the picture in which you are going to eliminate competition. If any competition gets so bad—if we needed the type of service that a motor carrier gives and couldn't get it because—or the monopoly put up the rates to such a point that they are prohibitive, we would go and buy our own equipment.

Q. You are assuming a rather doubtful situation.

A. I am assuming there never would be a case where there would not be competition. But if it did possibly happen, there would be a means to defend ourselves. We are not afraid that any monopoly is going to run away with rates.

Q. But you do feel that competition will be necessary in order to maintain a balanced picture in regard to rates?

742 A. Well, I don't know that—I mean—put it this way: At the present time there are many motor carrier associations—the Central States, Middle Atlantic States, you have your Eastern Central Associations, and those people meet together and sit down and fix rates—sit down and say that this is going to be the rates and we are all going to abide by them. So as far as the competition goes, they all put on the same rate. Now, we can protest those rates, just as I explained before. That was a case where the motor carriers in this bureau decided that the cut was too low, and they got together and even outvoted the man that was giving the lower rate and put the higher rate into effect.

Q. Do you know what was said in the original hearing as to whether it would be taken up to the Commission?

Exam. BAKER. I do not believe you should go into that. I think we should not go into the mechanics of these rate bureaus. It is not relevant to the proceeding.

Mr. MACDONALD. Very well.

By Mr. MACDONALD:

Q. What other carriers besides the Associated Company, if the application is granted, would carry your traffic over such long hauls as the example you have assumed, Buffalo to Atlanta?

A. Well, as I say, Buffalo to Atlanta at the present time, most of the business moves by carloading company. I gave you the reasons for moving by carloading company now. I think that if some of the carriers out of the territory had a through  
743 service, through bodies, where there was no interchange and had concurrences with the carriers themselves, why, I think that it would even develop business for these carriers.

Q. In your own case what would change in the picture you have just presented about your shipments by carloading companies?

A. What would change is, if this merger went through, or any similar case went through, where John Brown in Buffalo would take freight into New York and tie up with Henry Smith & Company in New York, we would have one body from Buffalo to Atlanta, Georgia. We could load our freight, see that it is properly loaded, and see that the freight would get down to its destination. Now, our means of shipping today, as I explained, the freight might move to Cincinnati from Buffalo, then by rail to Chattanooga and then trucked to Atlanta, Georgia—three transfers, where this eliminates any transfers. It is our objective and purpose to use lines, and always do use lines, that have truck service if we possibly can—or almost all.

Q. Your carloading business, then, would be substantially diverted to trucking?

A. Oh, no; I did not say that. I don't say what we would do; I say that is what the advantage would be.

Q. But you do not say what you would do?

A. I don't like to make a definite statement of what we would do until the occasion arises.

744 Q. I see. You have stated that because of the facilities existing in many of your plants you prefer to do business with one rather than several carriers; also for the reason that it is easier to determine overshots and damages, and other elements that enter into it.

A. Well—

Q. Let me finish.

A. Excuse me.

Q. In the event this application was granted, and you had the advantage of this through service into the south, would that change the picture as to local business around your plants in the northern and New England States?

A. Well, I don't think it would a great deal. I don't think if this merger went through that it would make any material difference. In this merger we have got three large companies; we have Consolidated; we have McCarthy; we have Moran. We give them all a good share of our business, and I don't think it would mean any particular increase or any particular decrease.

Q. They do have the larger share of your business?

A. I don't say they have the larger share; we do give them a large share.

Mr. MACDONALD. That is all.

Mr. SULLIVAN. I have no more questions.

745 Exam. BAKER. Witness excused.

(Witness excused.)

Mr. COCHRAN. Mr. Stevens. Mr. Examiner, this will be the last witness.

Exam. BAKER. Very well.

PAUL STEVENS, being first duly sworn, testified as follows:

Direct examination by Mr. COCHRAN:

Q. State your name and residence.

A. Paul Stevens, Burlington, North Carolina.

Q. What business are you engaged in?

A. Cotton goods manufacturer.

Q. What company are you with?

A. The Stevens Manufacturing Company.

Q. How long have you been with that company?

A. Twenty years.

Q. What is your position?

A. President.

Q. Do you have charge or supervision of the shipments of your manufactured product?

A. I do.

Q. Your plant is located at Burlington?

A. Yes, sir.

Q. Are you interested in any other shipping or manufacturing plant?

746 A. No, sir.

Q. About how much in terms of pounds constitutes your annual shipping, Mr. Stevens?

A. About two million pounds.

Q. You have reference to outgoing shipments as well as incoming shipments?

A. No; that is the outgoing product.

Q. There are shipments coming into your plant?

A. Of an equal amount.

Q. Of an equal amount?

A. Yes.

Q. From what points do these incoming shipments originate?

A. They originate at different points in Georgia, South Carolina, and North Carolina.

Q. And to what points are your outbound shipments directed?

A. Throughout the whole United States.

Q. Any particular locality to which the larger portion of it goes?

A. I would say that 80 percent of it went to the metropolitan district around New York and New England.

Q. And the remainder scattered about all over the United States?

A. Yes, sir.

Q. Are you acquainted with the names of the carriers in the application?

747 A. I am.

Q. Which ones of those companies operate in your section of the territory?

A. The Horton Motor Line and Barnwell Brothers; those two.

Q. Does Transportation come into your territory?

A. Only as a primary carrier.

Q. What do you mean by primary?

A. Well, tying in with Barnwell.

Q. Does Southeastern have operating rights in your territory?

A. No.

Q. Are you acquainted with the operations of Arrow Carrier?

A. Only in a general way.

Q. Consolidated Motor Lines?

A. In a general way.

Q. Are there any common carrier operations available for your shipments that go direct into the metropolitan area and on into the New England area?

A. Into the metropolitan area I would say there were 15 to 20 other carriers.

Exam. BAKER. You mean the metropolitan area of New York?

The WITNESS. New York City.

By Mr. COCHRAN:

Q. Are there any of those carriers that go on beyond the metropolitan area into the New England area?

A. Not that I know of; I don't think so.

Q. You do not know Akers, how far Akers and Hudson go?

748 A. No; I don't know.

Q. What proportion of your shipments is by motor truck and what proportion, if you know, by rail, percentagewise?

A. Well, our incoming raw commodities are a hundred percent by truck, and I would estimate that the outgoing goods would run eighty percent by truck.

Q. Do you do business with Horton Motor Lines and with Barnwell Brothers?

A. Yes.

Q. What portion of your outgoing freight and incoming freight will those two companies handle, do you suppose? Do you know?

A. I would have to estimate that.

Q. About what?

A. That would be, I would say offhand—about 50 percent of all motor shipments each way would be handled by those two firms.

Q. And the remainder of your shipping business is handled by about how many companies?

A. Not less than ten.

Q. What proportion of those ten that are furnishing you that service go direct to the metropolitan area of New York?

A. Well, all of them on outgoing freight; incoming freight is handled by some small feeder lines in scattered points where we have sources of supply.

Q. There has been testimony introduced in this case, Mr. Stevens to the effect that if this consolidation is permitted that it will produce a more efficient and dependable operation. I am going to enumerate some of the things that have been testified to for you: The reduction in loss and damage to freight, the better communication system as between shippers and carriers, and expedited service on account of the elimination of transfers, and a better and a more efficient use of equipment and terminals, and various other essential features, some of which you have heard. You have heard some of the testimony, have you not?

A. I have.

Q. Assuming this testimony is true, would such a unification and consolidation benefit you in your business?

A. Very much indeed.

Q. Would it benefit the public generally, in your opinion?

A. I should certainly think so.

Q. Have you any comments that you wish to make as a result of the answers you have given?

A. Well, only to emphasize one thing, that in my particular business we are engaged in manufacturing fancy goods of a seasonal nature on contract, and our ability to successfully do that is a question of the expeditious way in which we can turn it out, and naturally I am very much interested in any merger which holds out the promise of a faster and more reliable service.  
750 not only in getting my raw materials to me, but in getting my finished goods to my trade, and that is a very important thing.

Q. Did you hear the testimony as given here by the last two witnesses?

A. I did.

Q. Generally speaking, do you concur in what those witnesses said with reference to the benefits to be derived as a result of this unification—benefits to the shippers and shipping public?

A. Generally speaking, I see nothing to add or detract from their testimony. It is my experience one hundred percent.

Q. Can you in this unification or consolidation as proposed see anything that looks like a monopoly in the motor transportation business insofar as it affects your territory?

A. Well, the mere fact that we are using some ten other carriers, and there are at least ten or fifteen more in addition, which would be available to us if we needed them, would hardly suggest the threat of any monopoly, unless they should all suddenly retire from the field of operations simultaneously.

Q. Mr. Stevens, are there any other comments that you would like to make?

A. No, sir.

Mr. COCHRAN. That is all the questions I care to ask this witness.

751

Cross examination by Mr. MACDONALD:

Q. Mr. Stevens, can you state what percentage of your outgoing business goes to the metropolitan area of New York, roughly speaking?

A. Well, I stated that about eighty percent of it went to New York City and New England.

Q. Eighty percent of your business goes to metropolitan New York or beyond to New England?

A. That is correct.

Q. And of that eighty percent of your total business fifty percent of it, approximately, is now handled by the two companies operating on that run which will be in the merger?

A. Approximately so.

Q. You have also stated that you anticipate great benefits resulting to shippers and the shipping public from this unification. In view of the benefits you spoke of, do you anticipate diverting any of the remaining thirty percent or fifty percent of the business to New York to the other carriers of the unified lines?

A. No; we do not, or the simple reason that we do not control our outgoing shipments. They are sold strictly f. o. b. mill, and our customer determines the routing.

Q. Well, then, benefits to you are only indirect.

A. They are material. They are material in that the better facilities that I have to deliver into New England and to New York City against the competition which I have, why, the greater advantage it is to me, to serve my trade quickly.

Q. Do most of your shipments to the metropolitan New York area consist of carloads; that is, truckload or trailerload quantities?

A. No; they do not.

Q. They are part loads?

A. They are part loads.

Q. So as far as through shipments are concerned, that would not be of advantage to you, would it?

A. No; it would not.

Mr. MACDONALD. That is all.

(Witness excused.)

Mr. COCHRAN. Mr. Examiner, I am sorry. One witness wants to be put on. It is up to you.

Exam. BAKER. All right,

Mr. COCHRAN. All right, Mr. Autrey. I don't like to do this, but—

J. J. AUTREY, being first duly sworn, testified as follows:

Direct examination by Mr. COCHRAN:

Q. State your name and place of residence, Mr. Autrey.

A. J. J. Autrey, Atlanta, Georgia, traffic manager, Beck & Gregg Hardware Company.

Q. How long have you held that position?

753 A. Six years.

Q. What business were you in prior to that?

A. Traffic work; hardware traffic.

Q. You have been in traffic work for how long?

A. Approximately fifteen years.

Q. The business you represent is located solely in Atlanta?

A. Atlanta and Savannah.

Q. What area covers your shipments?

A. Outbound we cover five states, North and South Carolina, Tennessee, Florida, and Georgia.

Q. And inbound?

A. We get it from all over the United States.

Q. Principally from what section of the country, if there is a principal section?

A. Principally from the 'Middle West,' Chicago area, and the eastern area.

Q. About how much in pounds or tons do you ship annually?

A. Approximately fifteen million pounds in and fifteen million pounds out.

Q. A total of thirty million pounds.

A. Per year.

Q. Per year. Are you acquainted with the names of the companies set forth in this application for consolidation?

A. Yes, sir; I am.

754 Q. Which ones of the companies operate in the territory generally that you use, or is it a fact that they all operate in the territory you use?

A. They all operate in the territory we use in-bound, and two of them out-bound.

Q. Which two of them?

A. Horton and Transportation.

Q. All of the companies represented in this group are used by your company generally whenever the occasion arises for in-bound shipments?

A. That is right.

Q. At the points where your out-bound shipments begin, generally speaking, what companies—how many trucking companies furnish you the service that you require or whose service there is available for you?

A. On out-bound shipments we use approximately fifty.

Q. From what point?

A. From Atlanta.

Q. About how many from Savannah?

A. Approximately ten.

Q. Are there others that you do not use in that territory whose service is available for you, so far as you know?

A. Yes; there is.

Q. Do you know what percentage of your shipments is by rail? In-bound shipments I am talking about.

755 A. Approximately 60 percent in-bound by rail and 40 percent out-bound by rail.

Q. Out-bound—

A. Out-bound approximately 80 percent by truck.

Q. Your out-bound shipments would be classified probably as short-haul shipments?

A. Yes; altogether. The furthest distance would be Miami.

Q. It has been testified in this case, Mr. Autrey, that a consolidation such as proposed would bring about a more dependable and a more efficient motor truck operation, possibly a considerable reduction in loss and damage to freight, a better and a more finer communication system as between shippers and carriers, and expedited service by reason of the elimination of terminals—I mean of transfers in interchange, and a better and a more efficient use of equipment and terminals, and various other advantages, which you have heard. Assuming this evidence or testimony to be true, would such a consolidation or unification be of benefit to your company, you as a shipper?

A. Decidedly so.

Q. Would it as a result of that be of benefit to the public generally?

A. I should think so.

Q. Mr. Autrey, have you in mind any further statements you care to make?

756 A. I might add this, that at the present time our company is constructing in Atlanta a new warehouse, which will be located off of rail transportation. We would like very much to see this consolidation; due to our past experience, the difficulty we have encountered in tracing shipments, our of the New England territory particularly, coming in through New York, shipments getting lost and delayed, that we never knew where to locate them; and, of course, under our new set-up we will use motor freight transportation considerable more than we have in the past.

Q. You have faith in such a system of transportation and its reliability and dependability?

A. Certainly.

Q. And you believe it can be improved?

A. I certainly do.

Q. And you believe, as a matter of fact, that such a consolidation will tend to improve transportation by motor?

A. I certainly do.

Q. If the consolidation which is proposed of these eight carrier companies, the names with which you are familiar, is approved by the Commission, and as a result of the approval they are finally consolidated, would you consider that a monopoly of the transportation system by motor?

A. I certainly would not.

Q. Why not?

757 A. Out of the New England territory, as an illustration, we are not using to any great extent motor freight transportation due to the fact of the difficulty that we have experienced with the connecting lines, and for that reason we would like very much to see it granted. I do not see where there would be any monopoly at all in view of the fact that there are other methods of transportation that we have to use altogether, but it is delayed.

Q. Other methods of transportation, and, as a matter of fact, there are other motor carrier operations. You have stated some fifty out of Atlanta.

A. That is correct.

Q. And some ten or more out of Savannah.

Mr. COCHRAN. That is all the questions I have to ask.

Cross-examination by Mr. MACDONALD:

Q. Mr. Autrey, you stated that you anticipate certain benefits from the proposed unification if the application is granted, have you not?

A. Yes.

Q. And that other companies would also have the same benefits.

A. Sure.

Q. Well, in that case, do you not think that there will be some tendency on the part of shippers to use the Associated Transport Company rather than other companies, as they will have this expedited service?

758 A. Not altogether.

Q. I do not mean altogether; I mean won't there be a tendency for shippers who, like you, need expedited service?

A. That is in the nature; yes.

Mr. MACDONALD. That is all.

Mr. COCHRAN. That is all, Mr. Examiner.

Exam. BAKER. Witness excused.

(Witness excused.)

Exam. BAKER. We will adjourn until nine thirty in the morning.

(Whereupon at 6:35 p. m., August 21, 1941, the hearing in the above-entitled matter was adjourned.)

Before the Interstate Commerce Commission

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

HEARING ROOM "B,"

I. C. C. BUILDING,

Washington, D. C., Friday, August 22, 1941.

Met, pursuant to adjournment, at 9:30 a. m.

Before VERNON V. BAKER, examiner.

Appearances: (The same as heretofore noted,)

PROCEEDINGS

Exam. BAKER. Come to order, please. You may call your first witness, if you have one.

Mr. JOSELOFF. Mr. Davis.

E. J. DAVIS, being first duly sworn, testified as follows:

Direct examination by Mr. JOSELOFF:

Q. Your name and address, Mr. Davis.

A. E. J. Davis, Bridgeport, Conn.

Q. And what is your occupation?

A. Traffic manager.

Q. Would you just keep up your voice a little bit, Mr. Davis.

How long have you been traffic manager?

A. Twenty-seven years.

Q. With what concern are you connected?

A. With the Raybestos Division of Raybestos-Manhattan, Inc.

Q. Where are they located?

A. Stratford, Conn.

Q. What products are shipped by this concern?

A. Brake linings and clutch facings.

Q. Are you familiar with the general nature and plan of this present application?

A. Yes; I am.

Q. Are you familiar with the territory covered by it?

A. Yes.

762 Q. And generally with the motor carriers in this proposed unification?

A. Yes, sir.

Q. Now, with regard to the territory embraced in this application, please tell us your estimate of the amount of tonnage that was shipped out by your concern during the past year in this particular territory?

A. About 2,000,000 pounds.

Q. And of that 2,000,000 pounds generally how much would be by motor truck and how much by rail?

A. Fifty percent by rail and fifty percent by motor.

Q. In other words, a million pounds per year by motor truck?

A. That is right.

Q. And a million pounds per year by rail?

A. Yes.

Q. Now, as I understand it, the inbound tonnage comes generally by territory without the scope of this application?

A. That is right.

Q. Do you ship a part of this tonnage by carriers in the proposed unification?

A. Yes; I believe about 75 percent.

Q. By carriers in this proposed unification?

A. Yes, sir.

Q. Will you name the carriers in the proposed unification.

A. Consolidated Motor Lines, Horton, and Barnwell.

763 Q. Those are the principal carriers?

A. Yes.

Q. Now, I understand, the shipments from your plant are generally from Stratford, Conn., to Atlanta, serving points in between Stratford and Atlanta, and from Stratford, Conn., to Buffalo, N. Y., serving points between Stratford and Buffalo?

A. That is right.

Q. Do you also ship by carriers not in the proposed unification?

A. Yes; we do.

Q. Will you name a few of them?

A. Connecticut Motor Lines, Davidson Transfer, and up in Connecticut we have National Transportation, Adley, C. Rickard & Sons, and Seaboard Freight Lines. That is about all I think of.

Q. You say you have been traffic manager for the past 27 years?

A. Yes, sir.

Q. You know that there are other carriers in those territories besides those that you have mentioned?

A. Yes; I do.

Q. Mr. Davis, previous witnesses have testified that if this application were to be granted, there would be a saving in time in

the interchange of freight moving from New England to points south, between 12 to 36 hours. If that be so, would  
764 that saving in time be beneficial to your concern?

A. Yes.

Q. And what are your reasons for that?

A. Well, at the present time our warehouse stocks are quite low. We are making direct shipments to many of our jobbers and direct to some of the garages. Of course, those are urgent shipments, and it means a lot if we can get them to the customer in the fastest possible time.

Q. Does it mean something to you also insofar as maintaining your business and competing with other concerns is concerned, to have shipments move in the shortest possible time?

A. Yes; it does. We have two competitors that are closer to the southern markets than we are, and a saving of time would mean a great deal.

Q. Now, it has been further presented in evidence in this case, Mr. Davis, that the proposed application, if approved, would result in many other economies and benefits, such as uniformity in billing, centralized responsibility of carriers, financially stronger companies, and lessening the delays in shipment, and a facility to the shippers in tracing lost or strayed cargo, and settling or getting quicker settlements of their claims. It has also been testified that there would be benefits to the shippers in a more effective utilization of their plants when they have small space for loading freight or receiving the trucks, and would provide extra  
765 facilities in the event of emergencies or when additional equipment is needed.

Now, assuming those facts to be true for the purposes of this question, and based on your 27 years of experience in the traffic field, what is your opinion, or do you concur in those improvements as being beneficial to the shippers and the public?

A. I do. I think that the shipping public is entitled to this faster transportation, and I think this is a step in the right direction.

Q. Are you a member of any traffic association?

A. Of the New England Traffic League.

Q. Now, one further topic, Mr. Davis: In your opinion, is this movement, or is this proposed unification, one that would lead to or tend towards any restraint in trade or monopoly?

Mr. WIPRUD. Are you asking the witness a legal question?

Exam. BAKER. Will you read that question, Mr. Reporter?  
(Question read.)

Mr. JOSELOFF. May I make a statement to the Examiner?

Exam. BAKER. You may.

**Mr. JOSELOFF.** That is that this is a shipping expert, and he may state from his past experience whether there will be any lessening of competition.

**Exam. BAKER.** I feel, as worded, the question is objectionable.

I suggest that you phrase it somewhat differently  
766 and bring out the factual situation, rather than to ask for what might be construed as a legal conclusion.

**Mr. JOSELOFF.** I will be very glad to, Mr. Examiner, and I will withdraw that question.

**By Mr. JOSELOFF:**

**Q.** Mr. Davis, what, in your opinion, would be the effect of the proposed unification if approved by the Commission, on competition?

**A.** Well, there are plenty of other carriers that are competing, and that would compete with the members of this group.

**Q.** Would there be any divergence of freight from those carriers not in the proposed unification to carriers in the proposed unification?

**A.** Well, it has been our policy to divide our tonnage, and I don't think—as a matter of fact, I know that it would not make any difference to us if this consolidation went through. We are using carriers, and I know that we will continue to do so.

**Q.** In other words, if I understand your last remark, if this consolidation were to be approved, you would still continue to use other carriers; is that correct?

**A.** Yes, sir.

**Q.** When you say it would not make any difference, you mean that there would be no benefits to your company?

**A.** There would be a great benefit. As I stated before, we are now using members of this group, and it certainly would help us a whole lot to get our materials to market.

767 **Q.** Then, I take it, your remark that it would make no difference to you refers to your use of carriers not in the proposed unification.

**A.** Yes, sir.

**Mr. JOSELOFF.** That is all.

**Exam BAKER.** Cross-examine.

**Cross-examination by Mr. MACDONALD:**

**Q.** Mr. Davis, you stated that you do sell some of your products directly to users and garages?

**A.** Yes; we do.

**Q.** Do you sell any to trucking companies?

**A.** Indirectly. The purchases principally are made through jobbers.

Q. You sell none of your products directly to trucking companies?

A. That is right.

Q. Do you know whether you sell any to any of the subsidiary companies of the trucking companies embraced in this unification?

Mr. JOSELOFF. I object. I think it is beyond the scope of the direct examination.

Mr. MACDONALD. That shows the interest of the witness, Mr. Examiner.

Exam. BAKER. I feel you should state the names of the companies you have in mind, Mr. Macdonald. He has not  
768 shown any knowledge as to what the subsidiaries are.

Mr. MACDONALD. Very well, Mr. Examiner.

By Mr. MACDONALD:

Q. The companies concerned are Brown Manufacturing Company, United Sales Company—

A. United Sales—we sell them.

Q. A subsidiary of the Moran Lines, Division Tire & Sales Company.

A. No.

Exam. BAKER. Just to clarify the record, I do not believe the evidence indicates that that company is a subsidiary of the Moran Lines, Mr. Macdonald.

Mr. MACDONALD. I beg your pardon?

Exam. BAKER. I do not believe the evidence indicates that that Division Tire & Sales Company is a subsidiary of the Moran Lines.

Mr. MACDONALD. No. My use of the word is perhaps inept. It is merely owned by one of the stockholders of the Moran Company.

By Mr. MACDONALD:

Q. Mr. Davis, you stated that you understood, or at least you would appreciate the time saving which would result through this unification, when and if allowed, for the run extending from your plant in Connecticut to Atlanta, Ga., and that such time saving might be as much as 12 to 13 hours.

Mr. JOSELOFF. May I correct that impression of counsel? It was for the territory between Stratford, Conn., and Atlanta,  
769 Atlanta being the southernmost point. The points in between are the points concerned.

By Mr. MACDONALD:

Q. Do you ship now largely in full carloads?

A. No; we are strictly less-than-carload shippers.

Q. And if this unification went through, would you expect shipments of your products could have transit straight through on a long run, say, from Stratford, Conn., to Atlanta, without any stopping and unloading and reloading?

A. All of our shipments are less-than-carload shipments, and I do not know where the shipment would be broken down.

Q. Do you know, then, that there would be actually any time saving in regard to your shipments?

A. Well, I know that we would probably 12 hours in New York City alone.

Q. How?

A. All shipments that are made from Stratford tonight are to reach New York tomorrow morning, and they do not leave New York until that same night, although they are in New York all day long, as I understand it.

Q. Do you expect that that situation will be changed?

A. Well, as I understand it, these loads were to be made at some point in Connecticut, perhaps Bridgeport, Conn., and I don't know just how far they would take them, but probably down as far as, you might say, Charlotte.

770 Q. That is assuming that they cannot fill the rest of the capacity of the trailer or vehicle concerned?

A. That is right.

Q. What percentage of your shipments result in claims for over-shorts or damages?

A. Well, we don't have a great deal of trouble, but we have had cases where shipments have been mixed up and incorrect delivery made to, I think, the various transfer points.

Q. Is that a substantial amount of your business that is involved in such a transaction or transactions?

A. No; I would not say it was.

Q. Does it happen very often?

A. Well, twice here within the past two months.

Q. And what difficulties do you encounter in tracing those shipments?

A. Well, it was about a week before the matter was straightened out. A part of the delivery was sent to one section; it was just changed around.

Q. Then, would you say that the amount of your business which requires tracing is within 5 percent of the total amount of the shipments that you make by truck, or smaller?

A. I would say a greater amount.

Q. Greater than 5 percent?

A. Yes.

Q. How much greater?

771

A. Ten percent.

Exam. BAKER. Raise your voice, please.

The WITNESS. Ten percent.

By Mr. MACDONALD:

Q. Two shipments in two months would constitute 10 percent of your business?

A. No; but we have to trace a shipment quite frequently, but those particular shipments, those two shipments, were mixed up and it caused quite a delay. Of course, the customers are very, very anxious to get the materials today, and if they see that they are a day late in getting them into stock, we start to trace them.

Q. Do you concur in the feeling of the previous traffic witnesses that they would have a saving resulting from lower billing costs if this unification took place?

A. You mean billing costs for the carriers?

Q. No; for the shippers.

A. Yes.

Q. You do?

A. Yes.

Q. You anticipate maintaining your business with the other lines which you are now using; do you not?

A. Yes. As I said, our policy is to divide it.

Q. Then, the saving in your billing costs would only be as regards the transportation companies which you now use, and which are concerned in this unification.

772 A. That is right.

Q. They are the Consolidated, Barnwell, and Horton Lines?

A. Yes, sir.

Q. Does any of these three companies bill it at your plant in Stratford?

A. Consolidated.

Q. They carry to New York, and Horton and Barnwell from there on; is that right?

A. Yes, sir.

Mr. MACDONALD. That is all I have.

Exam. BAKER. Mr. Davis, aside from this question of speeding up your shipments, are there any other benefits that you can think of that would accrue to you as a shipper from the unification of these companies that you have referred to?

The WITNESS. Well, it would help a lot in tracing our claims and settlements, and also in tracing shipments, if we could deal with one carrier.

Exam. BAKER. Do you feel that single-line service from origin to destination is superior to two-line service?

The WITNESS. Yes, sir.

Exam. BAKER. Has that been demonstrated by your experience?  
The WITNESS. It has.

Exam. BAKER. Do you have any congestion at your shipping platform at the present time?

773. The WITNESS. No.

Exam. BAKER. Those are all the questions that I have.  
Do you have any cross-examination, Mr. O'Brien?

Mr. O'BRIEN. No.

Exam. BAKER. The witness is excused.

(Witness excused.)

Mr. COCHRAN. Mr. Lawson, come to the stand.

J. D. LAWSON resumed the stand and testified further as follows:

Exam. BAKER. Mr. Lawson has been previously sworn.

Direct examination by Mr. COCHRAN:

Q. Mr. Lawson, you have been sworn previously, I believe?

A. Yes, sir.

Q. Have you a paper there in your hands with reference to Horton Motor Lines?

A. I have.

Q. What is it?

A. It is an amendment to the charter of the Horton Motor Lines, Inc.

Q. A certified copy?

A. The paper I have is a certified copy of such amendment, sir.

Q. What is the date of that amendment?

774 A. Just a minute. I do not want to give you the wrong date, because there is a certificate attached here, too.

The certificate of the Secretary of State of North Carolina shows it was filed on January 24, 1941.

Mr. COCHRAN. Mr. Examiner, this amendment to the Horton Motor Lines' charter we would like to file at this time.

Exam. BAKER. Is there any objection to the receipt of this document in evidence?

Mr. O'BRIEN. No. May we have a copy of it, Mr. Examiner?

Exam. BAKER. Do you have additional copies?

The WITNESS. I do not have; no, sir.

Mr. COCHRAN. I will state that the only phase of the charter referred to in this amendment is the increase in the outstanding capital stock. There are no other changes in it whatsoever.

By Mr. COCHRAN:

Q. Is that correct, Mr. Lawson?

A. That is correct.

**Exam. BAKER.** The document described will be received in evidence as Applicant's Exhibit No. 5.

(Exhibit No. 5, Witness Lawson, received in evidence.)

**Mr. WIPRUD.** May we have copies?

**Exam. BAKER.** I understand copies are not available. We do not ordinarily require copies of such documents to be furnished. If you desire a copy I will request applicant to  
775 subsequently furnish you a copy.

**Mr. WIPRUD.** Well, for the record, will they briefly state what the amendments are that affect the capitalization of the company as now shown by the record?

**Exam. BAKER.** Will you do that, Mr. Lawson?

**The WITNESS.** The capital stock was increased to 70,000 shares, par value \$20.

**Exam. BAKER.** A little louder, please.

**The WITNESS.** Excuse me, sir. I say the amendment is as follows: "The capital stock of the corporation shall consist of seventy thousand (70,000) shares of the par value of Twenty Dollars (\$20) each, divided into ten thousand (10,000) shares of Class A Stock, ten thousand (10,000) shares of Class B Stock, and fifty thousand (50,000) shares of Class C stock." That is the substance of it.

**Exam. BAKER.** Mr. Lawson, is that the only amendment which has been made to the articles of incorporation of Horton Motor Lines since the hearing last July on the application of the Transport Company?

**The WITNESS.** That is right; yes, sir.

**Exam. BAKER.** Do you have any further questions?

**Mr. WIPRUD.** Off the record, Mr. Examiner.

**Exam. BAKER.** Off the record.

(Discussion off the record.)

776 **Exam. BAKER.** Back on the record. It will be understood that applicant shall furnish a copy of Exhibit No. 5 to Mr. Wiprud. Do any other parties desire copies?

**Mr. O'BRIEN.** Since he is making them up, Mr. Examiner, I would appreciate having any copy.

**Exam. BAKER.** And for any other intervenors that are present and request the same. I understand Mr. Connolly and Mr. O'Brien want them.

**Mr. COCHRAN.** We are through with this witness, Mr. Examiner.

**Exam. BAKER.** The witness is excused.

(Witness excused.)

**Mr. JOSELOFF.** Mr. Rettino.

S. V. RETTINO, being first duly sworn, testified as follows:

Direct examination by Mr. JOSELOFF:

Q. Give your name and address, Mr. Rettino.

A. S. V. Rettino, Hillside, N. J.

Q. And your occupation?

A. I am traffic manager for Bristol & Myers Company.

Q. Where are they located?

A. In Hillside, N. J.

Q. How long have you been traffic manager for that concern?

A. Twenty-two years.

777 Q. As such, do you handle the shipping problems of that concern?

A. Yes, sir.

Q. What products are manufactured or shipped out?

A. Drugs and toilet preparations.

Q. Generally, in what territory are those products shipped?

A. All over the United States.

Q. You received merchandise as well?

A. We do.

Q. From what sections?

A. Mostly from the eastern seaboard.

Q. Can you give us some idea or an estimate of the amount of your outbound tonnage per year?

A. About 40,000,000 pounds a year.

Q. And of that tonnage, approximately how much moves by motor carrier and how much by other means of transportation?

A. About 60 percent by motor carrier.

Q. That would be about 24,000,000 pounds a year?

A. That is right.

Q. Now, you have been present at a part of this hearing?

A. Yes, sir.

Q. And are you acquainted with the territory embraced in this present application?

A. Generally speaking; yes.

778 Q. Of that outbound tonnage by motor vehicle of 24,000,000 pounds per year, how much would you say was shipped in the territory embraced by the present application?

A. To all motor lines, or to the lines——

Q. To all motor lines.

A. To all motor lines?

Q. Yes.

A. Well, 60 percent.

Q. Well, as I understood your previous answer, your total shipments were 40,000,000 pounds per year.

A. That is right.

Q. And 60 percent went by motor vehicle.

A. That is right.

Q. Do I understand you to say that you have shipments all over the United States, or did you have in mind just shipments in this particular territory?

A. In this particular territory.

Q. Then, the 40,000,000 pounds per year would be shipments in this particular territory?

A. That is right.

Q. I see.

A. Well, I would like to clarify that just a little bit.

Q. If you will, please.

A. Our total shipments out of our plant amounts to about 40,000,000 pounds. That goes all over the United States. Some goes to warehouses, some goes to branches. I am not  
779 counting in that tonnage that which is again reshipped from branches and warehouses; so I would say that 60 percent of 40,000,000 pounds represents the truck tonnage.

Q. All over the United States?

A. Shipped out of our plant at Hillside.

Q. To all points in the United States?

A. To all points in the United States.

Q. Can you give us an idea of what tonnage would be shipped by motor carrier to the territory in the instant application; that is, in general, to the eastern seaboard, from Boston, Mass., to, roughly, Atlanta, Ga., to New Orleans, and to Buffalo and Cleveland?

A. Well, again, I would say 60 percent.

Q. Then, it would be 60 percent of the 24,000,000?

A. Yes.

Q. I understand.

A. No; no. That 24,000,000 represents what we ship by truck in the East.

Q. In the East?

A. Yes; because the other goes by rail. That 40 percent goes to the different branches and warehouses.

Q. Oh, I see. Thank you. Of that tonnage, did you ship by carriers in the proposed unification, as well as by other carriers?

A. Yes; we do.

780 Q. Will you name some of the carriers that you use in the proposed unification?

A. Horton Motor Lines, Southeastern Motor Lines, Moran Transportation, and Barnwell.

Q. Now, will you name a few of the nonmembers of the proposed unification that you use in these shipments?

A. Yes; Shein Express, Seaboard Freight Lines, Sunset Motor Lines, Rogers Motor Lines, Red Star Express, Buch's Express, Brooks Transportation, Davidson Transportation, Novick Transfer, Atlantic States Motor Lines, Super Service Motor Lines, W. T. Cowan, and Baltimore Transfer. Is that enough?

Q. Yes; that is enough, Mr. Rettino. There are other carriers that you use besides those carriers?

A. Yes; about 28 in all.

Q. Do you feel that there would be any lessening of competition if this proposed unification were to be approved by the Commission?

A. No, sir; I do not.

Q. Would you continue to use these other carriers not in the proposed unification, if this application be approved by the Commission?

A. Yes; we would.

Q. What benefits do you see to the shippers if the proposed application be approved?

A. As far as service is concerned, we try to confine our shipments to those lines who make direct service to destination, of course, taking into consideration that they must go to break-bulk points; but we can see probably a long-range program, some time in the future, when a combination such as this would probably follow the policy of the rails and make direct package trucks, like we make direct package trucks to points, we will say, where they don't have through truck service now.

To be specific on that, suppose now we were giving small shipments to points outside of terminal cities; say, Horton Motor Lines, for instance. With a combination or a consolidation, those cities where no terminals are now might enjoy direct truck service right out of Newark without stopping at an intermediate point to break bulk, and then out from the break-bulk point. As I say, that may probably happen; at least it is my hope that it may, and in that way I think we would get faster service and a lessening of the handling of our trucks, which is something to be considered.

Q. Now, will you please develop for the record the reasons why you are concerned with less handling of your particular products?

A. Well, the inherent nature of our product is susceptible to damage from handling. The less handling, the less damage.

Q. Is that of considerable importance to you?

A. It certainly is.

Q. Now, also develop whether or not it is important to your concern, in connection with your particular products, on tracing claims and on lost shipments.

A. Well, it is so much easier to do business with one concern than it is with seven or eight.

Q. It has been testified, Mr. Rettino, and you may have heard the testimony, to the effect that if the proposed unification be granted the company could then extend its direct wire system on communications, resulting in speedier handling in the tracing of shipments and more prompt information to the shipper, who may be questioning or trying to find the shipments. Would that be of benefit to your concern?

A. It would, definitely.

Q. It has also been shown here, Mr. Rettino, that it would tend to eliminate congestion at the shipper's platform in instances where the platforms are too small, for some reason or other, to accommodate the trucks.

Exam. BAKER. I think possibly he is in a position to testify as to that himself.

Mr. JOSELOFF. I will withdraw that question, Mr. Examiner.

By Mr. JOSELOFF:

Q. And I will ask you whether there would be any benefit from the standpoint of reducing congestion at your platform?

783 A. No. Unfortunately, our particular set-up would not change. We are proud of the fact that we cut down our pick-up trucks to a minimum. I can see where it would happen.

Q. In your particular concern?

A. In our particular concern; yes.

Q. From your knowledge and experience in the traffic business, do you see where it would be of advantage to other concerns?

A. Oh, yes; because we have been through it, and that is the reason why we have put in a system eliminating the number of pick-up trucks that come into our plant. It was born of that congestion.

Q. So, then, if I understand you correctly, the reduction in the number of pick-up trucks coming to your plant—or not to your plant at this particular time, but the plants of other shippers, in your opinion, would be of benefit?

A. Yes, sir.

Q. From the standpoint of the necessity of obtaining extra quick equipment at times of peak or rush periods, tell us whether or not that problem has presented itself so far as your company is concerned?

A. It is occurring at the present time.

Q. Now, it was testified that if the proposed unification be approved, there would result a greater flexibility in equipment, thereby making available a shift of equipment from one territory to another in peak periods or in emergency periods, would that be of benefit to you?

784

A. Yes, sir.

Q. Are you acquainted with, or have you had any experience in dealing with the East-West Transportation system, such as the Keeshin Motor Lines or Inter State Freight System?

A. No, sir.

Q. Do you, of your own knowledge and experience, know generally the territory that is served by such a system?

A. I do.

Q. Is that based on your experience and attendance at meetings and other matters concerning traffic?

A. General information; yes.

Q. Is there a comparable system, a North-South system, such as proposed here in existence?

A. I do not know of any?

Q. In your opinion, do you think from your experience as a shipper and in conference with shippers, a similar North-South trucking line would be of benefit to shippers in the territory concerned?

A. I think any consolidation that would gather in the shipments that originate in an area, we will say, like New York State, and that can move through New York and Newark, where the terminals are located, without the handling of the merchandise and the unloading of the truck, would be beneficial, where a tractor  
785 would pick it up and load it south, without unloading that trailer.

Q. In your opinion, would there be a considerable existing competition remaining if the proposed unification were to be approved?

A. Yes, sir.

Mr. JOSELOFF. That is all.

Exam. BAKER. Is there any cross-examination?

Cross-examination by Mr. O'BRIEN:

Q. Will you tell us, Mr. Rettino, what percentage of the shippers use straight loads?

A. No; I would not attempt to answer that question.

Q. In the case of your particular plant, what percentage of merchandise would be used to form a straight load?

A. A very small percentage, and that only for about a 10-mile haul, in the metropolitan area, to the steamship docks. Otherwise, it is practically all less-truckload.

Mr. O'BRIEN. That is all.

By Mr. MACDONALD:

Q. Mr. Rettino, in your testimony you made the statement that you thought it was easier to do business with one than with seven or eight companies. Does that mean that in the event this applica-

tion is granted, for business covered by the lines of Associated Transport the bulk of your business would go to Associated Transport?

A. No, sir.

786 Q. Even in the face of the fact it would be easier to do business with the one than the other 28, that I think you mentioned?

A. In spite of that, in our particular case there are four lines. That is the system that we now use.

Exam. BAKER. Keep up your voice, Mr. Rettino.

A. In our particular case, we now use four lines. In this Transport set-up, that would be cut down to doing business with one.

Q. How much, approximately, of the 24,000,000 pounds is now carried by these four lines?

A. About 25 percent.

Q. How much duplication of service is there among these four lines and the other lines that you mentioned?

A. Well, maybe I can answer it this way: The shipments that I now give to the Southeastern I give to the Super Service. The shipments that I now give to Moran and Company in the combine or in the proposed combine, I could give to Red Star. The shipments that I now give to Horton and Barnwell I think could be handled by Cowan, Baltimore Transfer, Atlantic States, Novick, Brooks, Davidson—

Q. How much of your business is now placed with the lines which parallel Barnwell and Horton?

A. I have not those figures available.

Q. Could you not state generally?

A. No, sir; I would not undertake it.

787 Q. When is your peak period of traffic movement?

A. Well, it is leveling out now. Every month is a fair month, but I would say the first six months of the year.

Q. In regard to the expedited service to be expected and the benefits which you have concurred in believing will result, is it your opinion that there would be no expedited service in the matter of time, unless loads can be made up which will travel complete to towns in which there are presently no break-bulk points?

A. As far as we are concerned, that is true.

Q. What percentage of your shipments result in over shorts or damages?

A. Very small.

Q. As a result of this merger, if it is accomplished, your billing will be reduced only insofar as those four lines are concerned; is not that true?

A. That is right, and, if I might add, our policy of checking insurance features will be materially reduced by three lines, we will say.

Q. Is it your opinion that a line such as the one now planned would continue in its present size, or tend to grow?

A. Well, if it is anything good—

Mr. JOSELOFF. Just a minute, before answering that question. I do not think this witness is qualified to answer that.

788 He is not a truck operator. He is a shipper.

Mr. MACDONALD. May I state that the witness has been well qualified by Mr. Joseloff as a traffic expert. I think a shipper who is a traffic expert is qualified to answer a question such as I have put.

Exam. BAKER. The answer, no doubt, would be very conjectural, but the witness may answer if he has any opinion on it.

A. Well, as I said, just from the shipper's standpoint, if it is good it should grow. I don't know whether it will grow or not.

By Mr. MACDONALD:

Q. One other question, Mr. Rettino: You said that you do not use any of the east-west carriers in shipping your products, but anything that goes a material distance west of the Alleghanies would be by rail?

A. That is generally true.

Q. Can you state any particular reason that has led to this policy?

A. Oh, yes. We feel the time is not yet ripe for real long-distance truck hauling, that the rails can handle that better.

Mr. MACDONALD. That is all.

Redirect examination by Mr. JOSELOFF:

Q. Is there anything in that territory west of the Alleghanies, so far as terrain, ruggedness, and topography are concerned, that makes it different from the territory embraced in this application along the eastern seaboard?

A. That would prevent us from it?

Q. Yes; that would prevent you from it.

A. No; that is gradually being overcome. We are coming to it gradually, further and further. We used to consider about 200 or 250 miles as a practical truck haul. That distance is gradually widening slowly and surely.

Q. Are you considering at the present time using the east-and-west trucking systems?

A. We are, because of other things that are beginning to crop up. There is the lessening of the intercoastal service, and, in fact, we

are trying to establish now, with the idea in mind of having several motor carriers to institute a cross-country through haul.

Q. By motor truck?

A. With a through rate.

Q. By motor truck?

A. By motor truck.

Mr. JOSELOFF. That is all.

Exam. BAKER. Are there any further questions of this witness?

Witness is excused.

(Witness excused.)

790 Mr. COCHRAN. Mr. Kirtley.

E. G. KIRTLEY, being first duly sworn, testified as follows:

Direct examination by Mr. COCHRAN:

Q. Give your name and place of residence.

A. E. G. Kirtley, Spartanburg, S. C.

Q. What business are you connected with?

A. Montgomery & Crawford, Inc., wholesale hardware, mill supplies, electrical goods, plumbing, household, and farm supplies—general jobbing business.

Q. Where is the principal place of business of that company?

A. Spartanburg, S. C.

Q. Has it plants located in any other places than Spartanburg?

A. No, sir.

Q. Its business consists of transactions in and out of this place of business at Spartanburg?

A. Yes, sir.

Q. What is your position with that company?

A. Traffic manager and officer manager.

Q. How long have you been in that position?

A. Twenty-four years.

Q. Do you have charge of the shipping in and out?

A. I supervise the shipping in and out.

Q. Can you state approximately the number of pounds or tons of shipping that comes into and goes out of your place of  
791 business?

A. Approximately 20,000,000 pounds, in and out.

Q. Per year?

A. Per year.

Q. How is that divided proportionately, if you know, between inbound and outbound?

A. Approximately 60 percent rail and 40 percent motor carrier.

Exam. BAKER. Let Mr. Cochran complete his questions before you start to answer them.

The WITNESS. Will you repeat that question?

By Mr. COCHRAN:

Q. Your answer to the question was 60 percent rail and 60 percent motor?

A. Sixty percent rail and forty percent motor.

Q. Sixty percent rail and forty percent motor?

A. Sixty and forty together, a hundred percent.

Q. But that was not the question I asked you. I asked you what percentage of your shipments were inbound and what percentage outbound?

A. Oh, pardon me. It is about—we bring in 10,000,000 pounds and ship out 10,000,000 pounds—about fifty-fifty.

Q. Now, you have already stated what the ratio is as between rail and motor shipments, as sixty-forty.

A. Sixty-forty.

792 Q. Are you acquainted, generally speaking, with the purpose of this hearing and the application for consolidation of several motor carriers?

A. I am.

Q. Are you acquainted with the names of the carriers involved in this transaction?

A. I am.

Q. Which ones of those carriers operate in the territory which you serve, or the territory into which you are shipping goods?

A. You are speaking of goods coming in?

Q. In or out.

A. First, as to the inbound—

Q. First as to the inbound, if you will, and then as to the outgoing.

A. We are speaking of coming in—Horton Motor Lines directly into Spartanburg and Barnwell Brothers coming in in connection with the Transportation Company or New South Express Lines, depending upon how it is routed.

Q. The Southeastern does not operate in that territory?

A. No, sir.

Q. Do you use the Arrow Carrier or Consolidated Motor Lines, Moran, or any of the other carriers in your shipments?

A. Out of New England territory, we use Consolidated Motor Lines. Up to New York we also use the Adley Motor Lines, which is not in the proposed consolidation. When we use Consolidated we route it in connection with the Horton Motor

793 lines.

Q. What area do your shipments cover, generally speaking?

A. Generally speaking, the majority of our l. c. l. business moves from New England States and up in New York State, Pennsylvania, New Jersey—some portion from Ohio, Chicago—you might say east of the Mississippi River, north and south.

Q. What percentage of your shipments out of Spartanburg go by Horton Motor Lines or Transportation Company?

A. A very small percentage of our business out of Spartanburg goes by Horton Motor Lines or Transportation.

Q. What carriers do you use principally?

A. We use principally the New South Express Lines out of Spartanburg due to the fact that we operate in rather a restricted territory; I should say a radius of 50 miles—50 or 75 miles.

Q. Do you mean your outgoing shipments?

A. Yes; outgoing shipments.

Q. They are short-haul shipments.

A. Yes; in some instances we use our own trucks on intrastate movements.

Q. You have private trucks?

A. Yes, sir; we have private trucks.

Q. Do you operate them to make deliveries?

A. Yes, sir.

Q. In any event, is it a fact that there are ample transportation facilities by motor in Spartanburg, other than the facilities that Horton Lines or Transportation or Barnwell Brothers might afford?

A. Ample; yes, sir.

Q. Can you give me some idea of the number of carriers whose service is available at that point?

A. Well, there is Lewis & Holmes, Miller Motor Express, Transportation, New South Express, Horton Motor Lines, and the Lord knows how many more, because I don't want any more to call on me; I don't have time to fool with them.

Q. There are others?

A. Yes. In addition to that, we have four rail-lines arriving at—

Q. Mr. Kirtley, there has been evidence introduced in this hearing to the effect that the proposed consolidation, if carried out, would result in a more efficient and dependable operation and a reduction in loss in damage to freight, a better communication system as between shippers and carriers, and expedited service on account of the elimination of transfers, a better and more efficient use of equipment and terminals, and other items, some of which you have heard. Assuming this testimony to be true, would such a consolidation, or unification be of benefit to you as a shipper?

A. Yes, sir.

Q. Would it be of benefit to the public generally, in your  
795 opinion?

A. In my opinion, it would be beneficial to the public that we serve.

Q. Have you any statement that you care to make in order to explain your answer to the last question?

A. Well, I don't think it will be necessary for me to make any more statements than have already been made. They do pretty well cover that situation. Any improvement in anything would benefit the public, and I heartily subscribe to improvements.

Q. Did you hear the evidence given by the other shipper witnesses on the stand yesterday?

A. Yes, sir.

Q. Do you concur generally in the evidence that they gave with reference to benefits to shippers and to the shipping public?

A. I do.

Mr. COCHRAN. Those are all the questions I care to ask this witness.

Exam. BAKER. Cross-examine.

Cross-examination by Mr. MACDONALD:

Q. Mr. Kirtley, a hypothetical question was put to you, in which you were asked to assume certain benefits which might accrue to shippers from this proposed unification. What do you say in regard to the actual existence of the possibility of those benefits to you as a shipper, and I might ask you to take, first, that of saving in time.

796 Exam. BAKER. Mr. Macdonald, that is the point that—  
The WITNESS. I can't answer—

Exam. BAKER. Just a moment, Mr. Kirtley.

The WITNESS. Pardon me.

Exam. BAKER. Mr. Macdonald, that is the point that I think we discussed yesterday, that we would not ask these shipper witnesses to testify as to the operating end of this transaction. Obviously, as a shipper, Mr. Kirtley is not in a position to testify as to whether or not these carriers will be able to save 24 or 36 hours.

Mr. MACDONALD. In regard to the make-up of his loads from New England, would he not be able to testify as to whether that could be so handled as to make-up through shipments or not?

Exam. BAKER. You may inquire as to the make-up of his loads, but as to the actual handling of the shipments, this witness has not been qualified to answer.

Mr. MACDONALD. Very well.

By Mr. MACDONALD:

Q. Your outgoing business, I believe you stated, was pretty much limited to the immediate locality of your plant?

A. Practically 75-mile radius.

Q. So you are primarily concerned with motor carriers in regard to the incoming traffic.

A. That is correct.

Q. And that incoming traffic would amount to how many pounds per year?

A. The incoming and outgoing would approximately 20,000,000 pounds.

Q. How much of that will be—

Exam. BAKER. Raise your voice, Mr. Kirtley.

Mr. COCHRAN. Yes; speak a little louder.

A. The incoming is 10,000,000 pounds, approximately.

By Mr. MACDONALD:

Q. And of that quantity, how much moves by motor carrier?

A. Sixty-four are the percentages I gave.

Q. Is that incoming?

A. That is incoming and outgoing.

Q. So that 4,000,000 pounds moves in by motor carrier?

A. Forty percent of the whole moves in by motor carrier.

Q. How much of that would you say originates in the New York-New England area?

A. I have not the figures to tell you exactly.

Q. Could you estimate it?

A. I would rather not.

Q. Then, you are not particularly in a position to state the amount of actual time saving which might accrue to you on shipments from that area?

A. That is an operating question, isn't it?

Q. It might be so considered. You said that Barnwell, with Transportation, was hauling some of your business. Do they have an exchange system in your locality?

A. I don't know where that exchange is—possibly in Charlotte. I don't know their operating set-up.

Q. Do you anticipate that there will be any change as to the transportation set-up of incoming business by motor carrier of your company after this unification is effected?

A. You mean the percentage of business given to other motor carriers?

Q. Yes.

A. I don't believe there will be any change.

Q. The benefits which you will derive will be limited to the savings in regard to your operations with the carriers you use in the unification?

A. We in our business at the present time are affected very seriously by this present situation, due to priorities and so business. Our business is based on metals—iron and steel. We don't know what is going to happen. We have to get priorities from our customers. If we cannot get priorities from the customers we cannot get steel from the factories, and if it keeps on like it looks like it is going to now, I don't know that we will have anything to haul.

Q. How would you say that that affects your trucking picture?

A. Well, if we don't have anything to haul, neither the trucks nor the railroads would get anything.

799 Q. You are not predicating your position in regard to this on the basis of your limited emergency; are you?

A. No, sir; I am hoping that it won't occur.

MR. MACDONALD. That is all I have.

EXAM. BAKER. You are excused.

(Witness excused.)

MR. COCHRAN. Mr. Delk.

C. R. DELK, being first duly sworn, testified as follows:

Direct examination by Mr. COCHRAN:

Q. State your name and place of residence.

A. C. R. Delk, Charlotte, N. C.

Q. What is your business?

A. Variety store business—Eagle Stores Company.

Q. What position do you hold with that company?

A. Vice president and treasurer.

Q. And where does that company operate?

A. I beg your pardon, sir?

Q. Where does that company carry on its operations?

A. Charlotte is the headquarters—North Carolina, South Carolina, and Virginia.

Q. Is that a chain store operation?

A. Yes, sir.

Q. Selling what products?

A. Five and ten merchandise—a variety store, as it is commonly—

800 Q. How long have you been connected with that business?

A. I have been connected with that business about 20 years—with that company only six.

Q. What amount, in pounds or tons, of shipping is done by your company annually?

A. Inbound, approximately 5,000,000 pounds.

Q. Outbound, it would amount to what, in pounds or tons, if you know?

A. Well, that would be just about the portion we have coming into our warehouse, which would be approximately 2,000,000 pounds.

Q. Your inbound shipments come from what section of the country, principally?

A. New York, New England, and Pennsylvania, principally.

Q. Your outbound shipments are just a question of delivery from the warehouse to the store?

A. That is right.

Q. What proportion of your inbound shipments come by rail and what proportion or percentage by motor truck?

A. Approximately 20 percent rail and 80 percent truck.

Q. Most of those shipments are in package form—small volume?

A. Yes, sir.

Q. Do you receive those packages on a truckload basis or in small quantities?

A. Generally small quantities, I c. l.

801 Q. Are you familiar in general with the proposed consolidation in this case, the application of which is being heard here?

A. Yes, sir.

Q. Are you acquainted with the names of the carriers that are grouping themselves together in this consolidation?

A. Yes, sir.

Q. Do you use practically all of those carriers, or all of them, in your shipments?

A. We use McCarthy and Consolidated and Moran, when the shipments emanate from their territories, and they are usually transferred to one of the southern operators, where they meet. We use, I believe, all but probably Arrow and Southeastern.

Q. Mr. Delk, state where your stores are actually located; at what points in South Carolina and North Carolina.

A. Kings Mountain, Morganton, Lincolnton, Belmont, Newton, Sylva, Canton, Waynesville, Forest City, Shelby, Heartsville—all of those are in North Carolina—Heartsville, S. C.; Charlotte, N. C.; Ashboro, N. C.; Gastonia, N. C.; Martinsville, Va.; Lenoir, N. C.; Waynesboro, N. C.; Fort Mill, S. C.; Dublin, Va.; Wimsboro, S. C.; Williamtown, N. C.; Great Falls, S. C.; Burlington, S. C.; Clinton, N. C. I believe that is all. I might have missed one or two.

Q. Do you know how many motor carriers you are using in the handling of your inbound shipments?

A. No, sir; I do not, exactly.

802 Q. Would it be several?

A. Yes; there would be close to ten.

Q. If this consolidation is approved, will there remain any considerable number of independent carriers whose services would be available to you?

A. Yes, sir.

Q. Is that true throughout the area where your shipments go?

A. Yes.

Q. Then, if you did not care to ship by Associated Transport, in the event that the unification is permitted, there would remain available to you ample facilities to carry all of your shipments?

A. Yes, sir.

Q. Mr. Delk, it has been testified in this case, or there has been testimony to the effect, that consolidation, if permitted, will result in more efficient and dependable operation; a reduction in loss and damage to freight, a better communication system as between shippers and carriers, an expedited service on account of the elimination of transfers, a better and more efficient use of equipment and terminals, and many other things, some of which you have heard. You heard some of the testimony, did you not?

A. Yes, sir.

Q. Assuming that this testimony is true, would such a consolidation be of benefit to you as a shipper?

803 A. Yes, sir.

Q. Would it be, in your opinion, in fact, a benefit to the public generally?

A. Yes; I believe it would.

Q. Have you any statements you want to make in explanation of your answers to those questions?

A. Well, I feel that if you put the cream of seven different companies together, you would greatly enhance the administrative efficiency of the company and also cut down expense considerably, which would make for a possible reduction in rates. At any rate, I think the efficiency would be greatly enhanced, and a great deal of time would probably be saved, particularly in long hauls from New England upstate New York.

Exam. BAKER. Mr. Delk, suppose you confine your testimony to matters that, as a shipper, you have personal knowledge of.

By Mr. COCHRAN:

Q. In what way would it directly benefit your organization? If you have anything particular in mind in answer to that question I would like to have it.

A. Well, it would simplify your claims a great deal, and you could handle your claims with one company, and there would be a great deal less claims due to the fact that there would be less

breakage, owing to the fact that there would probably be less transfers.

Q. Would the handling of your billing be benefited in any way by the consolidation of these companies, in your affairs?

804 A. Do you mean in outgoing freight?

Q. In or out.

A. Well, I am not qualified to answer that.

Mr. COCHRAN. All right. I have no further questions, then.

Cross-examination by Mr. MACDONALD:

Q. Mr. Delk, is it your expectation that there will be a lowering of rates as a result of this unification, eventually but not presently?

A. No, sir.

Q. Did you not state that there was a possibility of such a result?

A. Well, there is a possibility of it. I said such a thing might grow from it.

Q. But you do not expect it?

A. Not necessarily.

Q. In your shipments from New York and the New England area, do you specify the routing?

A. Yes, sir.

Q. Can you offhand name the carriers which are or which will be available to you outside of this system, in any one or more selected towns in which you have stores?

A. I would have to look those up—Akers Motor Lines—

Q. From your own knowledge, could you give us that information?

A. Well, a few of them; yes.

805 Exam. BAKER. Raise your voice.

A. I say I can give you a few of them—Akers, Harris Brothers, Miller Motor Express—

Mr. COCHRAN. If you have a list there, you may use it to refresh your memory.

A. Roadway Express, Great Southern Trucking, New South Express, Smith Transfer—

By Mr. MACDONALD:

Q. Taking those carriers, can you state what towns they serve in which you have stores?

A. Some of those carriers will hit all of our towns, I believe.

Q. Do you know of any one single trucking system in your territory which will be able to give you the same facilities as will the Associated Transport, Inc., when and if the application is granted?

A. The same facilities?

Q. Yes.

A. Do you mean in shipping from up North?

Q. All of your requirements considered.

A. Yes; I know several that should be able to do it.

Q. Can you name, say?

A. Well, I would say Roadway Express or Akers.

Q. Then, the benefits which you expect from this new system you already can get from those two systems.

A. No; I didn't say that. I don't know just what all the benefits would be, but they are at least competing now.

806 Q. I believe you stated that you can get all the services your requirements demanded from those two lines on a comparable basis as you could get from the unified line; did you not?

A. Well, so far as the type of service is concerned, we could get the best there is at the present time.

Q. Is it your opinion that this new unified line will have the same effect on independent chain stores as it will have on independent retailers?

Exam. BAKER. You need not answer that.

Mr. COCHRAN. Objection.

Mr. MACDONALD. That is all I have.

Exam. BAKER. Are there any further questions? Witness excused.

(Witness excused.)

Exam. BAKER. We will take a recess for 15 minutes.

(There was a short recess taken.)

Exam. BAKER. Come to order, please. You may call your next witness.

Mr. JOSELOFF. Mr. Glymp, will you take the stand, please.

C. A. GLYMP, being first duly sworn, testified as follows.

Direct examination by Mr. JOSELOFF:

Q. Your name and address, Mr. Glymp?

A. C. A. Glymp, purchasing agent and traffic manager of the General Shoe Corporation, Nashville, Tenn.

807 Q. If you will talk a little slower and a little louder.

Mr. Glymp, I think then all of us here will be able better to understand you and hear you.

A. Yes.

Q. Are you testifying in this case with the approval, knowledge, and consent of the officials of your company?

A. I am.

Q. Will you please state the location of the business of your company with reference to its main and subsidiary plants, if any.

A. We manufacture shoes. Our main plant is located at Nashville, Tenn. We operate 12 factories. Do you want a list of the factories, where they are located?

Q. No; just generally in what sections.

A. Well, we have them in Tennessee, Georgia, and Kentucky.

Q. To what territory do you ship?

A. Our shipping is not confined to any section in the United States. We have general coverage of all of the States, including shipments to Cuba, Puerto Rico, the Philippines, and South America.

Q. And from what territories do you receive?

A. We have three major points that we receive from. That is the Boston territory, Chicago territory, and the St. Louis territory.

Q. Now, how much do you ship by motor truck within the territory embraced within the present application?

A. We ship approximately 300,000 pounds a month.

Q. You are, of course, familiar with the territory that is embraced in the present application?

A. Yes; I am.

Q. Having been here at the hearings and having talked with the motor carriers involved?

A. I am.

Q. And that would be 3,600,000 pounds a year; is that correct?

A. Yes; that is right.

Q. Three hundred thousand pounds a month.

A. Yes.

Q. How much do you receive by motor truck per year within this particular territory?

A. It will average between 2,000,000 and 2,400,000 pounds a year.

Q. Do you have some figures available, or have you an estimate of how much of this tonnage is handled by carriers in the proposed unification, and how much by carriers in it?

A. On the inbound tonnage it will run between 900,000 to 1,200,000 pounds yearly, to the carriers in this proposed unification.

Exam. BAKER. Which carriers are they?

The WITNESS. Well, we only have one direct line coming into Nashville that is in the proposed unification. That is the Southeastern Motor Lines.

By Mr. JOSELOFF:

Q. But in addition to the Southeastern Motor Lines coming into your main plant, you know that there are other carriers in

the proposed unification from which the Southeastern would pick up the shipments.

A. Well, that is true—Consolidated.

Q. I think that is what the Examiner wanted. What other carriers would you receive from besides Southeastern and Consolidated?

A. They would be, practically on the inbound movement, the only ones that we would get, because our major portion comes from Boston, and we try to—that is, in this proposed unification you are speaking of?

Q. Yes. In other words, from your testimony, of the inbound tonnage approximately half would move by carriers in the proposed unification and half by other carriers.

A. It would average out just about that way.

Q. Can you name some of the other carriers?

A. Yes. We use Emmott Valley Transportation Company, Super Service, Mason & Dixon Lines, Hoover Truck Line, and the Goodman Freight Lines, and, of course, the New England and Trunk Line railroads.

Q. Now, on your outbound tonnage, would you say that percentwise it would be about the same ratio insofar as tonnage moving by motor carriers in the proposed unification and  
810 by carriers out of it is concerned?

A. It would possibly run a little bit lower, due to the fact that we have more lines going out of Nashville that are not in the unification than we have that are in the unification.

Q. In other words, the carriers in the unification are not carrying as much as the others?

A. On the outbound.

Q. About what percentage would you estimate that to be?

A. As an estimate, I would say possibly between 30 and 40 percent. Those figures are hard for me to give, due to the fact that there are no carriers; that is, originating carriers turning the material over to connecting lines, that possibly are not in the unification, but I do not have the record of it.

Q. It is sufficient for this record, if you will just give your recollection. I think that is all we will require here, Mr. Glymp. I believe you stated that you are familiar with the general nature and plan of the proposed unification; did you not?

A. Yes, sir; I am.

Q. In your opinion, would the granting of the proposed application by the Commission be of benefit to your concern?

A. Yes; in our judgment there are several distinct advantages that we can gain by this proposed unification.

Q. Would you name them, please?

811 A. Well, I mentioned that Boston is one of our major sources, and from this territory we move approximately 250,000 pounds a week. The tonnage is made up of solid cars, rail cars, and we have shipments consolidated at Boston, and move solid rail cars. On the truck movement we use for most of our rush shipments that we are behind on. Those are all routed truck, and under this proposed unification, it is our understanding that by eliminating transfers and moving on direct haul, we can save from 12 to 24 hours in delivering time.

Q. That is to say, assuming that the testimony of the operators be correct, that there be an elimination of time.

A. That is my understanding.

Q. It would be of benefit?

A. Yes.

Q. I wanted to get that clear for the record.

A. Yes.

Q. You may continue, Mr. Glymp.

A. This one feature alone is, under present conditions, invaluable to us.

Q. Why do you say "under present conditions"?

A. Well, under any condition, but at the present time it is much worse than it has been, because of our sources of supply, by giving us part shipments, they come through in small quantities where, before, we were able to get larger shipments coming out, and we are behind in our production. In the matter  
812 of shoe production, it is almost like the assembly line in automobile production. Each item has to follow in its right place, in order to keep your manufactured products going on through without tying up your factory. One part will hold up the entire assembly in the manufacture of shoes, and that is really an important item. We spend quite a bit of money on long-distance calls, day in and day out, getting the material moving.

Q. Would you say that there is any other reason at the present time, for getting in your merchandise at the earliest possible time?

A. One important item at the present time is delivery time on Government defense contracts, on the shoes that we are making for the Government. It seems that all of the orders that are out on shoes are taking up a big portion of available material.

and all shipments are routed the fastest way possible in order to keep defense contracts being delivered on schedule. We are using the fastest means at the present time of getting them. In my estimation, this would be a distinct benefit to us.

Q. Do you have substantial orders on defense contracts?

A. At the present time we are making 105,000 pair.

Q. What was that, sir?

A. 105,000 pair.

Q. Percentage-wise, is that a substantial portion of your production?

813 A. No. At one of our factories, I would say at the present time it is about 40 percent of the production, of one factory.

Q. And it is of considerable moment to your concern—

A. Yes, sir.

Q. To have definite delivery dates within which you must manufacture these shoes and deliver them to the Government camps, cantonments, or purchasing offices?

A. That is right. There are definite delivery dates specified.

Q. Now, will you continue with the other advantages which come to your mind, and which you see would inure to the benefit of your concern if the proposed application be granted?

A. Well, another important advantage to us is the elimination of misrouting material. That will be definitely eliminated, in our estimation, by loading the truck from Boston to destination over one carrier line, and it will expedite tracing shipments. The elimination of transfers would also mean less shortages, damages, and claims. This unification should also work a distinct advantage during peak periods by making available more equipment where the tonnage is heaviest and eliminate idle or half loaded rolling stock in normal times when the tonnage is light. We have had some trouble with that angle on equipment.

Q. Would there be any advantage to your concern from the standpoint of more efficient utilization of your own shipping facilities, such as the eliminating of congestion in your  
814 yards?

A. Well, of course, we have grown pretty much in the past several years. In fact, our business has grown faster than we have been able to expand our facilities. At the present time we have eight doors for shipping, and we ship an average of 3,800 cases of shoes, of approximately 115,000 pounds, a day, and that causes quite a bit of congestion, since we have so many lines coming into our factory for shipping shoes out. Is that what you are driving at?

**Q.** Yes; I wanted to bring out the situation at your plant, so far as the facilities for handling these various motor trucks coming into it are concerned.

**A.** Really, our biggest trouble is on the receiving end, on material in. We have only six receiving doors, and each door is allotted to a certain particular type of merchandise which goes into shoes, and that situation is always congested. We have a bad set-up on receiving.

**Q.** Can you give for the record an instance of delay or the difficulty in the tracing of a shipment, which, in your opinion, or the type of which, in your opinion, could be reduced, if not entirely eliminated, by the proposed unification?

**MR. MACDONALD.** May I suggest that these are operating questions involving carriers.

**EXAM. BAKER.** I think the shipper would have knowledge of the tracing of the shipments.

**THE WITNESS.** I certainly have. I trace them, day in and day out.

**EXAM. BAKER.** He may answer.

**A.** Long-distance calls to all connecting lines where we cannot get sufficient information, but I would have to go further with it.

**EXAM. BAKER.** You may answer the question.

**By Mr. JOSELOFF:**

**Q.** Will you state for the record and give an illustration that comes to your mind covering this situation?

**A.** Yes; I can give one that came up just recently. Recently we had a rush shipment, and we spent several long-distance calls to Boston to get the original carrier to turn this shipment—to turn it over to the Southeastern Motor Lines at New York. The originating carrier in this instance turned the shipment over the Spector Motor Lines. I understand the Spector carried this shipment to Chicago. From Chicago it was carried to St. Louis. From St. Louis it was taken to Memphis, and from Memphis it was brought back to Nashville. The total elapsed time in receiving the shipment was 14 days. That one shipment cost us \$28 in long-distance calls to locate it. I talked it with Spector twice on it, and I talked with all of the other connecting lines in New

**YORK,** trying to locate it. I had to order a duplicate of this shipment. It came in about six or seven days before the original shipment came in, and at the end of completing the order, which we had to have to get the shoes out, we were left with the first order of material, and we had the second order before the first order came in. We completed the shoes,

and we were left with the first order of material, in the amount of \$550 of inventory that we did not need. That sticks out in my mind, because it was about as bad a one as we have had lately, but I have had quite a few instances in that way all the way through.

Q. You have had quite a few instances of that?

A. Yes.

Q. In your opinion, would the proposed transaction, if approved by the Interstate Commerce Commission, restrict the competition with other carriers not in the proposed unification?

A. Well, we thought that over, and could see no reason that it would, due to the large number of carriers that are not in this unification that we are doing business with. We feel that there are ample carriers to take care of our needs without having this tend to restrict competition in any way.

Q. Are you actively requesting the approval of this proposed transaction by the Interstate Commerce Commission, Mr. Glymp?

A. Yes; we are, since we believe that we are entitled to any benefits or any improvement in service that can be obtained by more efficient operations, and we think this unification will result in giving us those advantages.

Mr. JOSELOFF. Thank you very much, sir.

Exam. BAKER. Cross-examine.

Mr. MACDONALD. I have just a few questions.

Cross-examination by Mr. MACDONALD:

Q. In your shipments out of Boston to your plant, how much of the tonnage is by motor and how much by rail?

A. Out of Boston, I would say about 35 percent of our shipments would be truck, approximately possibly 3,000,000 pounds, or something like that.

Q. Is there any motor carrier service available now for a through shipment from Nashville to the Boston area?

A. No; there is not.

Q. In the event that this unification is completed, would you say then that a substantial portion of this traffic will be carried by the unified lines?

A. No; I would not say that, because we try to equalize all of our shipments by the various carriers, the best we can, where the service, dependability, and proper attitude and interest are shown by the carrier regarding the business.

Q. Then, as regards the benefits you will receive from such unification, that will be limited to the elimination of a change in New York; is that true?

818 A. That is the big point, and where we figure on using that mostly would be on our real rush shipments.

**Q.** That would necessarily imply, then, that your shipments from the Boston area would have to be in full truck or trailer loads.

**A.** No; I wouldn't say that.

**Q.** You mean that a partly filled vehicle would be operated over that route, or that it would be filled up along the route?

**Mr. JOSELOFF.** This witness cannot testify if the vehicle is to be operated filled or partly filled.

**Mr. MACDONALD.** Mr. Examiner, this witness has testified that he does give the routing, and that some of his loads are part carload and some are full carload. He has shown an understanding of that problem, and I am merely inquiring to find out whether a through shipment will be possible from the Boston area, so far as this company is concerned.

**Exam. BAKER.** I think that is an operating problem, Mr. Macdonald, which this witness has not shown himself to be qualified to answer.

**By Mr. MACDONALD:**

**Q.** What percentage of your business, Mr. Glymp, would you say was within a radius of 300 miles of Nashville; that is, the shipping distance?

**A.** I am not prepared to answer that question.

**Q.** Would you say that you are substantially a long-haul freight operator?

**Mr. JOSELOFF.** He is not a freight operator.

**Mr. MACDONALD.** Freight shipper. I beg your pardon.

**A.** On inbound merchandise, we are. Of course, on outbound, we cover the whole United States, divided among the different States in the Union. On inbound merchandise, the St. Louis territory would be approximately 300 miles, and I guess that might run around 20 percent of the inbound tonnage.

**By Mr. MACDONALD:**

**Q.** Do you care to state how much, if you can, of the business from Nashville to the Boston area runs, as a percentage of the total, will be handled by the unified line?

**Mr. JOSELOFF.** How could he state how much would be handled in the future, Mr. Examiner?

**Mr. MACDONALD.** On the basis of his present performance, which he says will not change.

**Exam. BAKER.** He can give his estimate. The witness may answer.

**The Witness.** Repeat that. I didn't get it.

**Mr. MACDONALD.** I will.

By Mr. MACDONALD:

Q. What percentage of the total business moving from Nashville to the Boston area would be handled, would you estimate, by the unified line?

A. Moving from Nashville to the Boston area?

Q. Or from the Boston area to Nashville.

820 A. Well, I would say that it would practically stay the same as it is, due to the fact that we cannot tie ourselves up with just one line of carriers in our business. There are too many things that can happen that we have to use—

Q. Then, there will not be any particular change in the conditions at your loading platform?

A. Not that I know of, particularly. It might come in on the—

Q. And there will not be any particular change in your billing except that the Southeastern Line and the Consolidated Line will be one instead of two carriers.

Mr. JOSELOFF. I do not recall this witness testifying about any change or particular benefit on billing. He said it would be a benefit in tracing claims and shipments and service.

Exam. BAKER. He may answer.

A. I don't—

By Mr. MACDONALD:

Q. Have you heard the testimony of previous shipper witnesses as to the saving on billings that they would get?

A. No; I have not.

Q. Assuming, as the applicants have assumed, that there will be such saving, due to the fact that insurance claims or policies to be written and billings from and to the various carriers will be cut down in direct relation to the number of carriers concerned in this unification, would you say that you will have any particular saving in billing expense as a result of this unification?

821 A. I can't answer that. I really am not familiar with whether we would or not.

Q. That is a satisfactory answer. So far as your operations with the unified line, as proposed, are concerned, would you give it as your opinion that the benefits which you will receive are limited to the elimination of interchange at New York City?

A. I would say that was our biggest advantage.

Mr. MACDONALD. That is all.

Redirect examination by Mr. JOSELOFF:

Q. You do not mean to imply by that answer, do you, that that is your only advantage?

A. No; it is our biggest. I say, the biggest. We have other advantages, as I listed it here.

Mr. JOSELOFF. That is all. Thank you.

Exam. BAKER. Is there any further cross-examination?

Mr. MACDONALD. No.

Exam. BAKER. The witness is excused.

(Witness excused.)

Mr. COCHRAN. Mr. Barnwell.

R. W. BARNWELL, being first duly sworn, testified as follows:

DIRECT EXAMINATION

822 Q. State your name and place of residence.

A. R. W. Barnwell, Burlington, N. C.

Q. What business are you engaged in?

A. Motor trucking.

Q. How long have you been engaged in that business?

A. Approximately 11 years.

Q. What is the name of the company you operate?

A. Barnwell Brothers, Inc.

Q. What position do you hold with reference to that company?

A. President.

Q. As president of the company, what are your duties? Do you have general supervision over the entire line and its operations?

A. Yes; as far as policies go.

Q. When was Barnwell Brothers, Inc., incorporated, Mr. Barnwell?

A. In the fall of 1930. I don't recall the exact date.

Q. What year?

A. 1930.

Q. Had you been in the trucking business prior to that time?

A. Only a few months.

Q. Well, describe, generally and briefly, the growth of your company.

A. Well, we began in 1930 with one piece of equipment, and the growth has been gradual and constant from that time to the present.

823 Q. How many pieces of equipment do you have in operation at this time?

A. Are you only interested in the total?

Q. Just the total.

A. 337 pieces.

Q. Over what territory are your operations carried out?

A. From North Carolina to New York State and vicinity, and as far west as Asheville, N. C., and as far west from New York as Cumberland, Md.

Q. Do you operate west of Philadelphia into Pennsylvania, in that area there?

A. We have an operation, I think, from Baltimore to Scranton.

Q. Are your operations known as a common carrier?

A. Yes, sir.

Q. Intrastate or interstate?

A. Interstate.

Q. Have you any intrastate business?

A. No. We have a few intrastate rights in the State of Virginia. I do not think they are presently being operated.

Q. You filed an application on behalf of your company with the Interstate Commerce Commission, under the grandfather clause of the Act of 1935; did you not?

A. We did.

Q. What is the status of that application?

824 A. It has been granted.

Q. Your rights have been fully granted?

A. They have.

Q. What commodities, generally, do you carry, or are you limited?

A. We are not limited, other than commodities which we cannot handle, explosives, I believe, being one.

Q. The usual exceptions?

A. That is right—the usual exceptions.

Q. Mr. Barnwell, at what point in New York do you interchange your freight; at what point in New York City?

A. 490 Greenwich Street.

Q. What street?

A. 490 Greenwich Street.

Q. That is known as Downtown New York, is it not?

A. That is correct.

Q. With what companies do you interchange at that point?

A. We interchange with Consolidated Motor Lines, for one, and Acme and Colonial Freight Lines.

Q. There are a number of carriers with whom you interchange?

A. Quite a few.

Q. Is that your principal point of interchange?

A. Not any more so than Charlotte, N. C.

Q. With what companies, generally, do you interchange at Charlotte, N. C.?

825 A. Transportation, Inc., New South, Akers Motor Lines, and others.

Q. On your shipments going south from Charlotte, is it a fact that your principal interchange is with the Transportation Company?

A. That is correct.

Q. Name some other points of interchange.

A. Lynchburg, Va., is quite an important interchange point.

Q. Do you interchange at different points along the Atlantic?

A. Yes; to a certain extent.

Q. Do you know how many terminals you have?

A. No; I do not. That exhibit is correct.

Q. Are your terminals adequate for your present purposes?

A. No, sir; not a hundred percent. Only at a few points are they adequate.

Q. What is your main need in that respect?

A. Well, there are a number of points at which we need additional terminal facilities, and there are some points at which we do not have terminals that we would like to open them. Do you care for an illustration?

Q. What is the reason for the delay in providing these facilities, the terminal facilities that you have reference to?

A. There are two reasons. One is capital and the other is —

Q. Capital also.

A. Trained personnel to operate them.

826 Q. Maybe both of them are capital.

A. That might be true.

Q. But it is a fact that if you had capital, or is it a fact that if you had sufficient capital you would forthwith remedy the inadequacies with respect to your terminals?

A. Yes, sir; that is true.

Q. What is the condition of your equipment that you are operating, generally speaking?

A. Well, I consider it good.

Q. Are you in need of additional equipment?

A. Well —

Q. Or have you a sufficient amount at the present time to meet your requirements?

A. We have purchased during this year considerable equipment, but it might be that we would need more later on in the year.

Q. Did you, on behalf of your company, execute a contract with Associated Transport, Inc., on or about June 11th?

A. I did.

Q. And you joined in this consolidation application?

A. Yes.

Q. That is now on hearing.

A. I did.

Q. Was the main contract that you executed on behalf of Barnwell Brothers similar to that executed by Horton Motor Lines, Inc.?

827 A. It was.

Q. Are all of the differences with respect to that contract set forth in exhibits attached to the present application?

A. Yes, sir; that is true.

Q. Did you also execute a contract with Associate Transport, Inc., on or about the same date with reference to bringing into the group the Barnwell Warehouse & Storage Company?

A. Barnwell Warehouse & Brokerage Company.

Q. Barnwell Warehouse & Brokerage Company—you did?

A. I did.

Q. Do the exhibits attached to this application with respect to that company explain any differences as between the main contract and that as to the Conger Realty Company?

A. I think they are similar.

Q. That is a fact, though?

A. Yes.

Q. Will you give some reasons why you joined up your companies with this group?

A. Well, there are several reasons why I consider it advantageous to our company and its stockholders. I am seeking, first, more security for those who are dependent upon me.

Q. In what way have you been led to believe that this would bring about additional security for your stockholders?

A. Well, there will certainly be a greater distribution of responsibility and effort, as well as a larger field from  
828 which to secure our revenue.

Q. Do you consider the bringing together of the heads of these different companies into an organization such as Associated Transport, Inc., with their counsel and advice as directors, of any particular value in looking towards the security that you are talking about?

A. I do. I have always considered that decision would have to be made effecting the possible existence of my operation and business, and I feel that the addition of the other gentlemen into the picture certainly would be an advantage.

Q. What is your opinion with reference to the ability of these gentlemen who are on the board of directors, and I am now eliminating Mr. Wiley Moore and also Mr. Arnold.

A. Well, they are gentlemen who have made a success in their particular lines.

Q. What do you mean by "their particular lines"?

A. I am speaking of the freight transportation business.

Q. They are the heads, are they not, of the operating companies brought into this group?

A. That is correct.

Q. And I understood you to say that you considered they have been successful.

A. Yes, sir.

Q. In the operation of their own companies?

A. I do.

829 Q. Do you think of any other reasons why you felt that it was a wise step for you to join with this group?

A. Well, taking a far view of the matter, I am satisfied it would be beneficial to the public, not only now—

Q. Before we get to that, Mr. Barnwell, I was speaking of your own personal set-up. Would there be any advantages with respect to additional capital?

A. Oh, yes.

Q. In what respect?

A. That is quite a desirable addition.

Q. And need.

A. And need.

Q. For your company.

A. Yes, sir.

Q. You spoke of a need for additional capital with respect to remedying the inadequacies of your terminal facilities. Are there any other capital needs with respect to your company?

A. Not without the purchase of additional equipment. I would say, and additional terminals.

Q. I would like to ask you this question: Do you consider that you have on hand sufficient working capital?

A. No, sir; I do not.

Q. About how much money do you feel that you would need additionally in order to have available satisfactory working capital?

830 A. Not less than \$200,000 to \$250,000 would I feel amply protected.

Q. Mr. Barnwell, is it a fact that your operations from Charlotte to New York City, practically in their entirety, parallel the Horton Motor Lines?

A. I would say to the extent of approximately 95 percent, that is true.

Q. Would you give us a rough estimate of the percentage of your route paralleled by Transportation, if any?

A. It would be very slight. It would be 2 percent—not over 2 percent.

Q. I will ask you the same question with reference to Southeastern.

A. Southeastern parallels my line only from Washington, I believe, to New York City.

Q. Are there any restrictions, Mr. Barnwell, with reference to the Southeastern along the lines paralleling you, from New York to Washington, I believe you said?

A. Restrictions with regard to Southeastern?

Q. The Southeastern or yourself, with regard to service at intermediate points? If you do not know, just say so.

A. There may be a slight restriction on one particular route.

Mr. COCHRAN. I will withdraw that question, Mr. Examiner. Mr. Brock has already testified as to that.

By Mr. COCHRAN:

831 Q. Have you a copy of Exhibit No. 2, Applicant's Exhibit No. 2, with reference to competition in the southern section of the territory?

A. Yes; I do have it.

Q. Have you looked over that exhibit carefully?

A. Yes, sir.

Q. Is it substantially correct?

A. Yes; I am sure it is.

Q. Do you know how many companies named on that exhibit, other than Horton and Southeastern, parallel your operations from the Carolinas to New York City?

A. I have made a study of this schedule since I received it, and have attempted to check those lines paralleling Barnwell Brothers practically a hundred percent, and I find that there are 15 such lines.

Q. Will you name those lines, please.

A. Akers Motor Lines, Atlantic States Motor Lines, Brooks Transportation, Inc., Central Motor Lines, Inc., Colonial Motor Freight Line, Cooper Motor Express, Harris Brothers Transfer Company, Hooks Motor Line, the Mason & Dixon Lines, Inc., McLean Trucking Company, Miller Motor Express, Mundy Motor Lines, Roadway Express, R.-C. Motor Lines, and Ross Motor Lines, Inc.

Q. Mr. Barnwell, are there other companies serving this section from the Carolinas in the direction of New York than those that you have just named?

832 A. Oh, yes; there are many more such companies.

Q. I meant to ask the question, serving from the Carolinas, operating in the direction of New York, along the lines or duplicating your lines.

A. Yes; some operate perhaps as far as Baltimore and terminate there, and into Philadelphia, and many lines originate between North Carolina and New York, starting at Richmond or Washington and other places.

Q. Would it be possible for those lines on through bill of lading to carry freight from the Carolinas by interchange freight to New York City?

A. Oh, yes.

Q. You say there are quite a number of them?

A. Yes.

Q. By reference to the interchange of freight, Mr. Barnwell, I believe you stated that your principal place of interchange in New York City is at some point that you named in the downtown section of the city.

A. Yes, sir.

Q. If this unification is permitted and is put into effect, would it be possible for truckload shipments originating in the New England territory for the South, the Carolinas, or Georgia, to bypass the congested districts of downtown Manhattan?

A. Yes; I should think that would be possible.

Q. Would that be over the George Washington Bridge, 833 or some other method of getting through the city near the upper end of Manhattan?

A. Over the bridge or through the new tunnel.

Q. Mr. Barnwell, will you please enumerate those things which you consider will result in benefits to your company, and as a benefit to shippers generally, and to the public, by reason of the consolidation of these motor lines?

A. I have heard the testimony offered by other carriers, and I heartily concur in that.

Q. Name the carriers whose testimony you concur with?

A. Horton Motor Lines—

Q. You mean Mr. Horton?

A. Mr. Horton.

Q. All right.

A. Mr. Arbour, Mr. Brock, Mr. Seymour, and others who testified.

Q. You heard their testimony, and you heard them enumerate the number of advantages that would be inured to their respective companies—I will eliminate from Seymour from that question—the number of advantages that, in their opinion, would result to the shipping public, and to the public generally? You heard them testify?

A. Yes, sir.

Q. And you say you concur in that testimony?

A. That is right.

834 Q. Have you any additional statements, Mr. Barnwell, that might enlighten the record with reference to those matters under consideration?

A. I hardly see how I could add anything. I do not know that the question of savings from the standpoint of communications was brought out. It might have been, but I did not hear it. I look for considerable savings to be derived by the communication system, and also a large improvement in the service in that respect. I could give you an illustration of what I mean when I say our revenue is hardly sufficient for us to maintain an all-time wire from our northern point to our southern point, although Mr. Horton's is sufficient to do that, and with this unification it would be possible to cut out a duplication there that would amount to considerable money, and it is natural to suppose that that would improve our tracings and dispatching of material.

Q. Mr. Barnwell, what sort of system do you have for preventing accidents and looking after the safety of your equipment and employees?

A. Well, that is the thought that we have spent a great deal of thought and time and money on.

Q. You have heard the testimony with reference to some of the other systems that are in use?

A. Yes.

Q. You heard Mr. Arbour's testimony with reference to the system that he has in operation in his company.

A. Yes.

Q. Is it your opinion that your present system should be improved, or can and will be improved?

A. There is room for improvement, and I should certainly think it would.

Q. Is it your opinion that the ideas presented here by Mr. Arbour, if applied to your organization, would constitute an improvement upon your present system?

A. It is.

Q. You spoke of your terminal facilities being inadequate. Have you in mind, Mr. Barnwell, presently, any plans which you would like to put into effect in reference to your terminals in the event that this consolidation is brought about?

A. Only my own?

Q. Your own, in conjunction with other members of the group.

A. Yes; there are at least five points presently being served by our lines that are without adequate facilities, or with none at all. I have in mind Winston-Salem, N. C., Ashboro, N. C., Durham, N. C., Raleigh, N. C., and Martinsville, Va.

Q. Are those points where you now have terminals?

A. We do not have one in Winston-Salem. We occupy a terminal there of someone else's, a connecting carrier. We do not have our own terminal.

Q. As a common carrier of freight, Mr. Barnwell, do you  
836 consider the people of those communities are entitled to better service than is now being rendered by your company; is that the reason why you wish this consolidation?

A. We have rendered them good service, although it is a little expensive to us, and perhaps not as good as it might be.

Q. That is on the question of economy from the standpoint of the company rather than of service to the public, that you are speaking about specifically.

A. No; I do not say that, but we have found this to be true: Whenever we open a terminal in a town, our business increases tremendously.

Q. And the reason you have this need of terminals, I believe you stated a while ago, was lack of capital.

A. Yes, sir.

Q. Would it be possible, Mr. Barnwell, from your study of the terminal facilities in your section and over the routes that you are operating, by rearranging the use of the present terminal facilities and by the addition of other facilities, terminal facilities, that you will render a better and more efficient transportation service to the public?

A. Yes, sir; I really feel that.

Mr. COCHRAN. Those are all the questions I care to ask this witness at this time.

Exam. BAKER. Before we start the cross-examination, we will recess until 2 o'clock.

837 Mr. COCHRAN. This will be the last witness, Your Honor.

Mr. TOBIN. Why not finish it, Mr. Examiner.

Exam. BAKER. You have no other shipper witnesses?

Mr. COCHRAN. No.

Exam. BAKER. Then, I think we will go ahead. You may cross-examine.

Cross-examination by Mr. WIPRUD:

Q. Mr. Barnwell, you testified in regard to the anticipated financial security which you hoped to experience as a result of this unification. So far as that financial security is concerned, what do you think about the inclusion of Transportation, Inc., in this proposed unification?

A. I do not know that I understand your question clearly.

Mr. WIPRUD. Will you read the question, Mr. Reporter?

Exam. BAKER. Yes; read the question. I don't think I got it, either.

The WITNESS. I certainly think the inclusion of Transportation, Inc., would not add to the financial strength of the unification, but the shipments would be distributed more equally than they are, because everybody would have an interest in Transportation.

By Mr. WIPRUD:

Q. Would you state what that interest is, Mr. Barnwell?

A. Well, I have some of the stock of Transportation. I think it is approximately—I don't just recall what the percentage  
838 is, but it is probably 28 percent of the capital stock. Does that answer your question?

Q. Yes. Thank you. I might add to that question, though: Have any of the members of your family any stock in Transportation?

A. Yes. My two brothers have stock in Transportation.

Q. Will you state the amount of stock that they have in Transportation?

A. When I said I thought it was 28 percent, I included in that my two brothers—their holdings.

Q. What is the business of Barnwell Warehouse & Brokerage Company, Mr. Barnwell?

A. At the present time practically its only line of business is the leasing of what few trucks it now owns and a very small amount of storage being conducted in the town of Burlington.

Q. What has been the situation in the past?

A. That was the parent company, Barnwell Warehouse & Brokerage Company, and at that time we conducted a warehouse business and brokerage of chemicals and mill supplies, et cetera. From that company grew Barnwell Brothers, but with the introduction of the trucking business, they eventually eliminated or did away with the business of storing in our small town. Therefore, it has just been held more or less as a leasing company since that time.

Q. Since what time?

839 A. Well, I would say approximately five years ago.

Exam. BAKER. Did not that company also formerly render some pick-up and delivery service for Barnwell Brothers?

The WITNESS. Yes; over the territory immediately surrounding Burlington.

By Mr. WIPRUD:

Q. Referring to Transportation, Inc., again, Mr. Barnwell, will you state for the record, if you know, who the other stockholders of that company are?

Mr. JOSELOFF. I do not object to the witness answering, if he knows, but I think that was set forth clearly by Mr. Clay, when

he stated his position and who the stockholders were, at the very inception of the case.

EXAM. BAKER. I do not recall that he testified to the names of the beneficial owners of that stock. Perhaps he did; but if Mr. Barnwell knows, he may answer the question.

A. The only way I could answer it is to say the J. Wiley Moore interests. I think it is perhaps in his son's name, however. I think his children own the stock.

EXAM. BAKER. Do the four interests own a majority of the stock?

The WITNESS. Yes.

By Mr. WIPRUD:

Q. You indicated the application reflects the difference between the Horton and Barnwell companies. I assume you meant by that the difference in regard to methods of doing business at the present and in the past.

840 A. Yes.

Q. The Barnwell Warehouse & Brokerage Company has never been used as a purchasing agent for Barnwell Brothers; has it?

A. No, sir.

Q. You indicated that one of the difficulties at the present time in connection with the proposed additional capital expenditures was not only the lack of capital, but also the lack of trained personnel. There is nothing in this unification that would assist in the latter, is there?

A. In regard to trained personnel?

Q. Yes.

A. Well, I do not know that they would assist in it at all, sir.

Q. You have testified in regard to interchange at New York, Mr. Barnwell. Assuming a movement from Burlington, N. C., into New England, consisting of less-than-carload operations, what stops would be involved and at what points over that operation for unloading and loading to fill the space of the vehicle?

A. You mean a partially loaded truck leaving Burlington for New England; is that correct?

Q. That is right.

A. And in our particular instance, what stops would it make to get additional loads?

Q. That is right.

841 A. At Richmond or Lynchburg or Charlottesville or Washington. That would be about all. If we had not filled it by that time, I mean we would not continue it. I should say.

Q. As an operating proposition, that practice would not be changed, would it, insofar as that movement is concerned, even if these lines were unified?

A. It would, in this respect, sir, that instead of there being two companies, with a like situation, it would be one, and the chances are that many more trucks would be completely filled at each originating point.

Q. That would be the extent of the change in that regard?

A. Yes.

Q. In your opinion, would a trailer be sent from Burlington, N. C., over this route through New York into New England, without change?

A. Yes; I think that would be practicable. Is that what you mean?

Q. Yes.

A. Yes; I do. It is presently being done between Transportation and Barnwell Brothers into the South.

Q. Between those two lines?

A. Yes.

Q. Well, how is that movement handled? Is the trailer transferred to Transportation, and they pick it up with their tractor; is that it?

842 A. That is correct.

Q. So it is possible to send a trailer through under existing conditions, as between these various lines?

A. It is, as far as our companies are concerned—Transportation and Barnwell.

Q. Yes.

A. We have that arrangement.

Q. But it is, as an operating proposition, possible between other lines involved in this case?

A. Yes.

Q. I think you testified in regard to your intrastate rights, Mr. Barnwell. Have you ever made application for intrastate rights in Pennsylvania?

A. Intrastate rights in Pennsylvania—not to my knowledge.

Q. Considering the fact that your line parallels the lines of the Arrow Carrier Corporation for a considerable distance in the State of Pennsylvania, will you state why you have not sought such rights?

A. Well, sir, we have never been that type of operator. I mean, we are more or less a long-distance operator, and we have not cared particularly about the operation of short hauls between points close together.

Q. Then, insofar as your operation in Pennsylvania is concerned, it is wholly interstate?

A. Yes, sir.

843 Q. I do not recall whether you testified or not, but what proportion or what percentage of your routing miles are competitive with Horton lines?

A. I said I thought it was about 95 percent. I gave that figure earlier.

Q. And your business is competitive with that or the Horton Lines?

A. Yes.

Q. And if this unification is approved, you believe that that competition will no longer exist?

A. That is right.

Q. I believe you testified, Mr. Barnwell, that one of the advantages, if not one of the considerations that led you to join in this unification, was the value which you placed upon the opinion and counsel of the men that you named, and who will form the official family of the proposed unification. Will you state for the record why you value Mr. Seymour's opinion regarding trucking problems?

Mr. COCHRAN. If you will remember, I left Seymour out of my question.

Mr. WIPRUD. Well, the witness did not.

A. Mr. Seymour has had considerable experience in the operation of taxicabs and the maintenance and upkeep of large fleets. I presume it would be of advantage from an operating standpoint, though he has been considered a very successful  
844 businessman, and I do heartily regard his judgment in that respect.

Q. The taxicab business is somewhat different than the trucking business; is it?

A. Yes; quite true. It is quite different, but the maintenance problem may be somewhat similar.

Q. I believe counsel here stated that Mr. Moore resigned from your directors. Was it the directors of Associated Transport?

Mr. COCHRAN. Mr. Arnold said on the stand that he would resign.

Mr. WIPRUD. Yes; and I believe it was the testimony also of Mr. J. S. Arnold—

Exam. BAKER. Has there been any testimony that Mr. Moore was going to resign?

Mr. MACDONALD. Mr. Cochran stated on the examination of this witness.

Mr. COCHRAN. No; I directed my attention to operating ability and eliminated those two from my question.

Exam. BAKER. Perhaps you had better rephrase your question.

By Mr. WIPRUD:

Q. Mr. J. S. Arnold, who was a member of the directors of the Associated Transport Company, testified that if and when this unification is approved he proposed to resign from the board of directors. Will you state very briefly, if you know, who will succeed him on the board?

A. It is my thought that it would be a gentleman from the Arrow Carrier organization. That has been my sup-  
845 position, and I think it is correct.

Q. Do you know the business of Mr. W. L. Moore?

A. His business?

Q. Yes.

A. Yes; he is in the oil business.

Q. In what company?

A. Pure Oil.

Q. Do you know the position he holds in the Pure Oil Company?

A. He is chairman of the board, I believe, of Pure Oil of the Carolinas.

Q. Of the Carolinas?

A. Yes; and perhaps a similar company in the State of Georgia.

Q. Do you know whether Pure Oil sells gasoline and other products to any of the companies involved in this unification?

A. They sell them to Transport, Inc., I think. That is the only one I know of which they sell.

Mr. WIPRUD. That is all, Mr. Barnwell.

Exam. BAKER. Is there any further cross-examination?

Mr. O'BRIEN. No.

Mr. JOSELOFF. I would like to ask the witness a few questions.

Redirect examination by Mr. JOSELOFF:

Q. Mr. Barnwell, Mr. W. L. Moore is not a director of Transportation, Inc.; is he?

846 A. No.

Q. Nor is he a beneficial stockholder of Transportation, Inc.; is he?

A. That is my understanding. I understand the stock is not to him.

Mr. JOSELOFF. That is all.

By Mr. COCHRAN:

Q. Do you interchange trailers at Charlotte with Transportation?

A. Yes, sir.

Q. Are there any intercompany points on the system where you interchange equipment?

A. At Asheville, I believe.

Q. With what company?

A. Transportation.

Q. Is there any other company with which you exchange equipment?

A. No.

Q. You stated with reference to Transportation, or did you state or mean to state that your interest in bringing Transportation into this group was the fact that you were a stockholder, and that was your only interest in it?

A. I did not make that statement, sir. I would not make that statement. That is a reason, but they are also a very important connection of ours, as well, over which our interchange freight into the South has moved for eight or nine years.

847. Q. You consider that Transportation is a concern that has potentialities as to growth and development?

A. Yes, sir; I do.

Q. I believe you mentioned trained personnel.

A. Yes, sir.

Q. Did you hear Mr. Horton's testimony with reference to the possibilities of training personnel?

A. I did not hear that, Mr. Cochran.

Q. Has it been discussed in this group, or have you considered the question of inaugurating schools or some method for training personnel?

A. I do not recall that that has been discussed in my presence, although I know such things do exist, and we have a semblance of such an arrangement in our own organization.

Q. You spoke of Mr. Seymour as being an experienced maintenance man so far as trucks are concerned. Do you consider Mr. Seymour is a man of any considerable ability, executive ability?

Mr. O'BRIEN. I do not know that the witness testified as to trucks.

Mr. COCHRAN. Cab trucks.

Mr. WIPRUD. Taxicabs, he said.

Exam. BAKER. Rephrase the question, to avoid any confusion.

By Mr. COCHRAN:

Q. You spoke of Mr. Seymour having experience in the maintenance of trucks; is that correct?

A. No, sir; taxicabs.

848. Q. Well, yes; taxicabs. A taxicab is not a truck. Taxicab, I believe, is right. How long have you known Mr. Seymour?

A. I have known him for about 18 months.

**Q.** Do you consider him a man of considerable ability as an executive, or not? Just state the facts.

**A.** I do consider him a man of executive ability, and my inquiries have proven that men who have known him much longer than that have the same opinion.

**Mr. COCHRAN.** That is all.

**Exam. BAKER.** Mr. Barnwell, Mr. Seymour has also been interested in the trucking business; has he not?

**The WITNESS.** Yes, sir.

**Exam. BAKER.** So that his experience has extended to the maintenance of trucks in that way.

**The WITNESS.** Yes, sir.

**Exam. BAKER.** Are there any further questions of this witness?

**Mr. WIPRUD.** I have just one question, Mr. Examiner, in view of that situation.

Re-cross-examination by Mr. WIPRUD:

**Q.** You testified in regard to interchange at New York, Mr. Barnwell, with carriers other than carriers involved in this unification, in the event that this unification is approved.

849 **What have you to say about interchange with carriers other than with carriers involved in this unification?**

**A.** Well, it will be necessary for the unified lines to continue their interchange of freight with as many lines as possible today, because a good bit of our business is derived from those sources, and it certainly would not be to the interest of the unification to reduce the number of interchange carriers.

**Q.** Well, assuming that the lines with which interchange is now had by Barnwell Brothers at New York City parallel the routes of a carrier involved in this unification, with which you also interchange at New York City, would not the tendency be to divert the tonnage, the interchange tonnage, northbound, to the carrier involved in the unification?

**A.** I doubt, sir, if that would change it, because the usual practice is this: Our company selects what they consider the best company going into a territory, and makes the best bargain it can with them, as far as interchange business is concerned, and that company is considered the preferred connection of the line, my line or Mr. Horton's or whoever it may be, and is there given the unrouted freight regardless, but any routed freight would continue to be given to the lines—for instance, if it was routed Barnwell-Adley, it would certainly move over that combination of Barnwell-Adley.

**Q.** And if it is routed Associated Transport, it would  
850 go to Transport only.

A. Yes.

Q. In the event the unification is approved, the tendency would be, would it not, so far as interchange business at New York is concerned, for this line which would become a part of the unified line to interchange with other lines that are a part of the unified system, more than they do today?

Mr. JOSELOFF. There would not be a problem of interchange, would there, after the unification?

The WITNESS. I was just going to say—

Mr. WIPRUD. I guess not. I guess that answers the question.

Exam. BAKER. What is your answer, Mr. Barnwell?

The WITNESS. I said that would probably be eliminated to that extent.

Mr. WIPRUD. That is all.

By Mr. O'BRIEN:

Q. Do I understand, Mr. Barnwell, if the unification is approved by the Commission, the matter of interchange will continue as it is now with your company?

A. With whom, Mr. O'Brien?

Q. With one of the operators who are interested in the interchange and operating parallel routes.

A. We do not contemplate, or at least it has not been my contemplation, to reduce my number of interchange carriers other than those who would become automatically eliminated by becoming a part of the unification.

851 Mr. O'BRIEN. That is all.

By Mr. WIPRUD:

Q. Would it not be your purpose, Mr. Barnwell, so far as Associated Transport is concerned, or the unified lines, and would it not be to the interest of the unified lines, to hold it to those lines so far as they possibly could?

A. It would certainly be to the interest of the unified lines to make their proportionate part of the haul, as far as they could. That is evident.

Mr. WIPRUD. Yes.

Exam. BAKER. Are there any further questions? Witness excused.

(Witness excused.)

Mr. COCHRAN. That is the only witness we have, Mr. Examiner, until our auditor is prepared to go on the stand.

Exam. BAKER. Do you make a motion for an adjournment to a particular day?

Mr. COCHRAN. I would like to ask that this hearing be adjourned until Tuesday morning.

Exam. BAKER. The Department of Justice indicated, when it first requested permission to intervene in these proceedings, that it would desire some additional time. Is it still the desire of the Department of Justice for additional time, Mr. Wiprud?

Mr. WIPRUD. Yes; it is, Mr. Examiner. As I indicated here the other day, the request of the Attorney General for 30  
852 days is the period which is indicated as necessary within which to complete the testimony which we propose to present.

Exam. BAKER. If we could adjourn for one week, would it give you the additional time to prepare any testimony that you desire to present? Would that be satisfactory to counsel?

Mr. WIPRUD. As I stated at the outset of the hearing, the nature of the testimony presented by applicant would indicate to some extent the testimony which we propose to present. I do not believe that there is clearly presented in the record here yet exactly the basis upon which this transaction is to be consummated, and that would have some effect upon some of the testimony that we would present. If it were possible to have the financial interests, which would indicate what is missing here on the question of the basis upon which this transaction is proposed to be consummated, it might considerably shorten our presentation and considerably expedite it.

Exam. BAKER. Mr. Wiprud, I think the basis of the transaction is set forth in the contract which is now a part of the application. It is true that there will be some adjustment as a result of the auditor's testimony, but that will not materially affect the basis of the transaction. I personally do not desire to postpone this case for one period of time, and then grant a further adjournment. I feel that after one adjournment we should complete this hearing; so if you have any feeling that one week will not be  
853 sufficient time for you to prepare any evidence you want to present, I would like to have you state so now.

Mr. WIPRUD. Well, all I can do is to restate what the Attorney General has already stated; and that is that we would like 30 days in which to present the testimony that we have to present.

Exam. BAKER. Mr. Wiprud—and I will address this to all of the parties—is it the desire of the parties to submit briefs after the close of the hearing? Can you make any statement in that regard at this time?

Mr. JOSELOFF. If you wish a statement from the applicant, Mr. Examiner, I may state that the applicant does not desire to file briefs.

Exam. BAKER. What would be your position?

Mr. O'BRIEN. It may be necessary. The information which we have requested as to the amendment to the charter has not

yet gotten into the record, and we will probably not get that until after the reopening of the hearing, and naturally we will have to make some investigation ourselves in connection with that matter. However, I have asked Mr. Cochran today if it were possible for him to get that information for me, and he has assured himself, and so has Mr. Seymour, that they will endeavor to get it to me in typewritten form over the week end;

854 and that, of course, will help considerably, but more than likely we will have to investigate it and probably have to put our financial statements into brief form. That is, unless there is a sufficient amount of time in between the adjournment and the reopening of the hearing.

Exam. BAKER. What I had in mind was that if we grant intervenors additional time to prepare their case, it would seem only fair from the standpoint of the applicant—and, naturally, that is the only party that would suffer by the delay occasioned—that perhaps we cut down the usual time granted for the filing of briefs after the close of all the evidence. The usual time is 30 days. How would the parties feel about cutting that down by one week, say, to 23 days?

Mr. O'BRIEN. That would be agreeable with us.

Mr. WIPRUD. It is agreeable to us.

Mr. JOSELOFF. Do I understand from Mr. O'Brien that if that information with regard to the employees which he has requested be furnished to him over the week end, there might not be any desire, so far as he is concerned, to file a brief?

Mr. O'BRIEN. No, sir. I may have to file a brief. I cannot answer until I have gotten that information and had an opportunity to examine it. May I inquire if Mr. Wiprud desires to file a brief?

Exam. BAKER. I was not asking the parties to commit themselves definitely on that, but I would like to have them state whether or not 23 days will be a sufficient time in case briefs are submitted.

855 Mr. WIPRUD. That will be satisfactory to us.

Mr. JOSELOFF. That will be satisfactory.

Mr. COCHRAN. You can make it 10 days, and that will suit us.

Exam. BAKER. Before deciding upon the length of time and as to the justice of a protracted adjournment to allow intervenor to prepare evidence, I feel he should give some indication as to just the nature of the evidence he proposes to submit.

Mr. WIPRUD. We are willing to do that. Mr. Examiner, if you are directing your question to me.

Exam. BAKER. Yes.

Mr. WIPRUD. Our evidence will be directed to just the scope recited by Mr. Arnold in his letter, with reference to the elimination of competition and the monopolistic features of this proposal, and may also embrace the financial aspects of the proposal in its relationship to those two first points. I think that generally covers it.

Exam. BAKER. I would like a little more specific information, Mr. Wiprud, as to the type of evidence you propose to submit. Do you propose to bring in witnesses to show that there will be insufficient competition over the routes involved in this transaction, or is it merely proposed to bring a witness to testify generally as to the evils of monopoly?

Mr. WIPRUD. I think the former.

856 Mr. JOSELOFF. It seems to me, Mr. Examiner, that this case has been noticed and pending for a considerable period of time, and if it is Mr. Wiprud's intention to confine his evidence to competition in the territory generally, he should show us why he needs a great deal of time for bringing in those witnesses. That does not present any difficult problem in analyses or in computation. It merely presents the problem of calling up someone on the telephone and asking him to come up, and after a conference, or something of that sort, putting him on, as you do in an ordinary case. I fail to see where Mr. Wiprud has given any substantial reason that would indicate that any further extended period is necessary.

Insofar as the financial aspects of the case are concerned, they are clearly set forth in the application. In fact, the financial exhibits are in, and the only exhibits that would come in when the applicant submits its auditor are in clarification of the exhibits that are already presented and in analyses of the adjustments. It seems to me that having had this application before him, as Mr. Wiprud has had, and having sat through these hearings, he has a full grasp of the problems and the points in issue in this case, and I cannot see where, on the basis of what he has stated, any extended time is necessary. The applicant is prepared, as a matter of fact, to go on with the case on Tuesday, but feels that the Examiner's suggestion of one week is, considering  
857 all the circumstances, certainly a very ample time.

Exam. BAKER. Mr. Wiprud, what have you to say as to the necessity for additional time?

Mr. WIPRUD. Well, I think that is the whole question. In our view, Mr. Examiner, we do not believe there is any evidence here on competition that is competent or is sufficient upon which the Commission can make a finding. I think we have pointed that out in connection with these exhibits, and it will be our effort to present to the Commission what we believe to be the result of this

proposed unification upon competition. We have had an enormous duplication of figures which completely blind and obscure the real effect of this proposed unification upon the motor-trucking industry upon the Atlantic Seaboard. We do not feel the record has been scratched on that question. As far as the exhibits are concerned that have been brought in here, they are almost impossible of interpretation, and certainly of applying them to that question. They merely list a series of carriers in a given territory, and to indicate the points they serve does not reflect the competitive picture. I think, from reading the prior reports, that difficulty was clearly emphasized by the Commission, and as far as we can ascertain there is nothing in this record that is any different from that former record. We hope to present the competitive picture and the effects of this unification upon the competitive picture.

858 Exam. BAKER. The notice of the hearing on this application was served July 29th, and I am advised informally that the Department of Justice made telephone inquiry with respect to the matter within a few days after that date; so they have had knowledge of the pendency of this application for a considerable period of time. I believe that an adjournment of this case for two weeks will be sufficient under all the circumstances.

I will therefore adjourn this proceeding until September 5, 1941, at 10 o'clock a. m., at the office of the Interstate Commerce Commission.

(Whereupon, at 1:10 o'clock p. m., August 22, 1941, the hearing was adjourned.)

859 Before the Interstate Commerce Commission

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

HEARING ROOM "B."

I. C. C. BUILDING.

Washington, D. C., Friday, September 5, 1941.

Met, pursuant to adjournment, at 10 a. m.

Before VERNON V. BAKER, Examiner.

Appearances: (The same as heretofore noted, with the following additional appearances:) Frank Coleman, Special Assistant

to the Attorney General, Anti-Trust Division, Department of Justice, Washington, D. C. Edward F. Lacey, Executive Secretary, The National Industrial Traffic League, 450 Munsey Building, Washington, D. C. W. H. Ott, Jr., 500 Peshtigo Court, Chicago, Ill., appearing for Middle Atlantic States Shippers Motor Committee and Kraft Cheese Company.

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## PROCEEDINGS

Exam. BAKER. Come to order, please. We will now resume the hearing on the application of Associated Transport, Inc., in Dockets MC-F-1612 and 1613. Before the applicant puts on its first witness, are there any additional appearances this morning?

Mr. COLEMAN. Mr. Examiner, I appear for the Anti-Trust Division of the Department of Justice. My name is Frank Coleman, special assistant to the Attorney General.

Exam. BAKER. Are you a registered practitioner?

Mr. COLEMAN. I happen to be; yes, sir.

Exam. BAKER. Very well.

Mr. MILLER. Mr. Examiner, I would like to add to the carriers represented by Mr. Dempsey and myself. Those carriers are Harris Brothers Transport Company, Inc., Charlotte, N. C., and W. W. Miller, doing business as the Miller Motor Express, Charlotte, N. C.

Mr. LACEY. I am entering the appearing of Edward F. Lacey, executive secretary, on behalf of the National Industrial Traffic League, offices at 450 Munsey Building, Washington, D. C.

Mr. OTT. W. H. Ott, Jr.—

Exam. BAKER. Just a moment. Mr. Lacey, you are a registered practitioner, are you not?

Mr. LACEY. Yes.

862 Exam. BAKER. Do you desire to state the position of the League?

Mr. LACEY. We are here to observe. We may file a brief, and if a proposed report is entered we may have something to say about the proposed report; but we have no position to announce as yet.

Exam. BAKER. Very well.

Mr. OTT. W. H. Ott, Jr., 500 Peshtigo Court, Chicago, Ill., for Middle Atlantic States Shippers Motor Committee and Kraft Cheese Company.

Exam. BAKER. Will you state whether you are a registered practitioner?

Mr. OTT. I am a registered practitioner.

Exam. BAKER. I believe the position of the Middle Atlantic States Shippers Motor Committee has already been stated.

Mr. OTT. Yes, sir.

Exam. BAKER. Your appearance is also, as I understand it, for the Kraft Cheese Company. Is that correct?

Mr. OTT. That is correct.

Exam. BAKER. What is the position of that company?

Mr. OTT. That they may appear and participate in the filing of a brief, or if a proposed report is issued, to take a position on that. I have no position to state at the present time.

863 Exam. BAKER. Very well. Applicant may call its first witness.

Mr. JOSELOFF. Mr. Howell, please.

H. E. HOWELL, being first duly sworn, testified as follows:

Direct examination by Mr. JOSELOFF:

Q. Your name and address, Mr. Howell?

A. H. E. Howell, Taunton, Mass.

Q. What is your occupation, Mr. Howell?

A. Vice president in charge of traffic, McCarthy Freight System, Inc.

Q. How long have you been associated with McCarthy Freight System, Inc.?

A. A little over nine years.

Q. And as such, your duties have been connected with traffic problems?

A. Yes; in direct charge of all traffic problems, and for a number of years of sales activities, as well.

Q. I show you this booklet or pamphlet, Mr. Howell, entitled "Analysis of Competition with McCarthy Freight System, Inc., and Consolidated Motor Lines, Inc., of Regular Route Common Carriers of General Commodities for Interstate Freight Traffic in New England," and ask you whether that was prepared under your direction and charge?

Exam. BAKER. Suppose we identify it, first, Mr. Joseloff.

864 Mr. JOSELOFF. I ask that it be marked for identification.

Exam. BAKER. The document described will be identified as Plaintiff's Exhibit No. 6.

(Exhibit No. 6, Witness Howell, marked for identification.)

By Mr. JOSELOFF:

Q. I ask you whether or not this was prepared under your direction and charge?

A. Yes; it was prepared under my direct supervision.

Q. Will you please look at this exhibit and explain the general nature of it and its contents?

A. The exhibit itself consists of 36 pages, and front and back covers. It purports to show the competition which exists in the New England territory north of Bridgeport—north and east of Bridgeport, Conn., and east of Albany, N. Y., and including all territory covered by these two operators in the States of Rhode Island, Massachusetts, and Connecticut, and the immediate Albany, N. Y., area.

Q. Looking at the exhibit specifically, would you explain please the various topics contained in it, with particular reference to the meaning and purpose of the arrangement.

A. Well, the exhibit is drawn up so as to clearly indicate the competing carriers operating over the routes as shown in this exhibit. Page 1 is an index to the contents of the exhibit.

865 On pages 2 to 7, inclusive, will be found an alphabetical list of the competing carriers. In this section will be found a total of 292 carriers that are shown as competing with the McCarthy Freight System and Consolidated Motor Lines on one or more of the routes shown.

On pages 8 to 10 will be found a numerical list of these same carriers. In this numerical list I might add that the code numbers or numbers assigned these carriers are shown. The reason they are not consecutive is because we found it more advantageous to use numbers assigned these carriers in the tariffs filed with the Commission. Due to the shortage of time we used these code numbers rather than to attempt to do them all over in a consecutive order. However, these numbers will accomplish the same purpose.

Q. But the code numbers themselves are in consecutive order.

A. That is right.

Q. And the next number is higher than the preceding number.

A. That is right. On pages 10 to 16 will be found Table I, which is the table showing the total number of competing carriers by routes. Page 17 is just an outline map of the territory covered by this exhibit, which I spoke of previously. On pages 18 to 22, inclusive, will be found route graphs showing the competi-  
866 tion. Table II on page 23 shows an analysis of competition by routes showing individual carrier references. I will explain these sections in more detail as we go through the exhibit.

Q. Now, looking specifically at page 2 of this exhibit, Mr. Howell, I note that you have the carriers' addresses and code numbers. To what does that code number relate?

A. That code number is the number I spoke of before. That particular code number is the number assigned by the New England Motor Bureau in tariffs published by them, in which all of these carriers participate in either local or joint through rates in

competition with both the Consolidated Motor Lines and the McCarthy Freight System. These code numbers, of course, are used in other sections of this particular exhibit. In other words, they tie in specifically with Table No. II on page 23. It will be more in order to discuss that when I reach the explanation of it. It would be better to take them in order than to jump to that now.

Q. Is there anything further you wish to add by way of explanation of the alphabetical list of competing carriers, pages 2 through page 7?

A. No; they speak for themselves, except I would state that there is a total of 292 carriers listed in this particular section.

Q. Now, are these competing carriers all common carriers of commodities generally?

A. Yes; this exhibit does not attempt to show anything but the competition of regular route common carriers of general commodities. There are, of course, a great number of carriers who have irregular route rights, which competition is very severe, and they, of course, could be considered if time permitted a more complete analysis of this particular exhibit. Of course, there are many carriers who have rights to handle specific commodities which this exhibit does not attempt to even show, even though on these specific commodities that competition is often more severe and stronger than the carriers of commodities generally.

Q. This exhibit, does it purport to show any other forms of competition, such as rail or water competition?

A. No; not at all. This exhibit just shows the actual motor carrier competition, regular route common carriers, motor carriers, of commodities generally.

Q. Whether or not, from your own knowledge and experience in the trucking business, particularly your connection with the McCarthy Freight System, for a number of years, you know of the nature of the rail and water competition?

A. Yes; I am very familiar with it.

Q. State just briefly for the record what it is.

A. The New Haven Railroad operates in practically all of the territory covered by this exhibit, with the exception of a small part of the territory in the northeastern part of Massachusetts, such as the Lowell, Lawrence, and Amesbury territory, where the Boston & Maine Railroad operates; likewise, the territory in the northern part of Massachusetts, such points as Fitchburg, Greenfield, Pittsfield, and North Adams. That territory is operated by the Boston & Maine Railroad and the Boston & Albany Railroad. Those two carriers also operate between Boston & Albany and New York territory. So there is, of course, rail competition to practically every point shown on this exhibit.

Q. Now, in addition to that competition, what can you tell us of the competition of the private trucks or the shippers in this territory?

A. Well, it is my opinion that New England, due to its highly industrialized short-haul territory, is more susceptible to shipper competition than probably any other area in the United States, and it is always one of our problems there to take this shipper competition into consideration.

Q. Whether or not it is a substantial amount of competition at the present time?

A. Yes; it is. It is very substantial.

Q. Whether or not this exhibit takes into consideration the contract carriers operating in this territory?

A. No; it does not attempt to do that. That competition is fairly strong, too, particularly in certain commodities.

Q. Now, I am going back to the exhibit—

Mr. JOSELOFF. And, by the way, that exhibit number was what?

Exam. BAKER. No. 6.

Mr. JOSELOFF. No. 6?

Exam. BAKER. Yes.

By Mr. JOSELOFF:

Q. Going back to Exhibit No. 6, Mr. Howell, is there anything further that you would desire to add to your second topic "Numerical List of Competing Carriers," on pages 8 through 10?

A. No; that section, I think, explains itself, and I have previously explained the code numbers, as to why they are not directly consecutive in all cases. This numerical list, of course, would list the same total number of carriers as I mentioned before, 292.

Q. Now, will you explain, or is there any further comment you wish to make on Table No. I, which is the total number of competing carriers by routes, and which is set forth on pages 10 through 16 of this Exhibit No. 6?

A. Yes; I think an added word or two would be proper on this particular section. This Table No. I shows the total analyzed number of routes, 257. Using the first line as an example, it shows that between Albany, N. Y., and Boston, Mass., which we have analyzed, there are nine regular route common carriers of commodities generally. Now, we have shown on the far righthand corner, where it is entitled "Route Shown on Map," the letter "E."

Later on there will be found five different maps, and they are marked A, B, C, D, and E, and if you turn to the last map, which would be E, you will find a line drawn directly between Albany and Boston, with a figure "9" in the broken center. In other

words, that map indicates that there are nine such carriers as indicated operating between Boston and Albany, and that ties in with this Table No. I.

The same thing would be shown on the second graph, between Amesbury and Providence. For example, we show seven carriers listed, and if you will turn to map C you will find the same direct line shown between Providence and Amesbury, with a No. 7 indicated in the center where the line is broken.

With that explanation, I believe the rest of the exhibit speaks for itself.

There were a great number of routes analyzed; as a matter of fact, all of the routes of any consequence at all, and that the McCarthy Freight System or the Consolidated Motor Lines operates within the confines of the territory that I have indicated the exhibit covers.

Q. Now, I note that you have five different maps, numbered A through E, consecutively. Will you explain what these  
871 maps purport to indicate on the basis of the routes and why you have divided them up as you have on this exhibit?

A. First, Mr. Joseloff, I might mention that on page 17 is shown an outline map of the territory. We did that just to make it a little bit clearer. This outline map shows the 29 important points in the southern New England territory which this particular exhibit considers, and Albany, N. Y., as well.

We will now proceed to map A, which is found on page 18. It is quite obvious that if we attempted to put all of these 257 routes on one map, we would have a map which would be simply unreadable. So we were forced to devise some method of breaking them down. We found it necessary to break it into five different maps under a mileage basis; so that map A represents the routes which are under 50 miles; map B represents mileages of 51 to 75, inclusive; map C, 76 to 100 miles; map D, 101 to 135 miles; and map E, 136 miles and over.

Referring to map A specifically, you will see a direct line drawn between Boston and Providence, with the figure "78" in the middle. That indicates that there are 78 such carriers as I have mentioned operating between Boston and Providence.

By referring to the line between Springfield and Middleton, you will find "20" in the broken line, which indicates that there are 20 carriers; Springfield to Hartford, a line showing 44 carriers; Pittsfield to Albany area, showing 25 carriers.

I might add that in analyzing the compliance orders and  
872 any other orders issued by the Commission covering these operating rights, we have not considered any circuitous routes. These competitive carriers have direct routes between all these points shown on any of these exhibits.

For example, if a carrier had operating rights from New London, Conn., to Springfield, and Springfield to Worcester, running a direct route from New London to Worcester, we would not show that competition at all, even though it is competition.

Map B—of course, I do not believe it is necessary to take too much time on it—simply shows the route between 50 and 75 miles, as I have indicated previously, and that is true of the other maps. In other words, all of these maps actually show the different routes. There is no duplication of routes in any case.

Of course, when you go to map E, you get longer routes, such as Boston to Albany, Albany to New London, Boston to Bridgeport, or routes of that type. In other words, as the maps progress in alphabetical order, the distances of the routes analyzed increase.

Q. These numbers that you have on the maps, then, are tied into the rest of the exhibit in what fashion?

A. They are tied in directly with Table I, as has been previously referred to, back to Table I on page 11, the first line of which shows between Albany and Boston a number of 873 carriers, 9, and it shows the route shown on map E.

In other words, if you will refer to map E and locate the broken line between Albany and Boston, you will find the figure "9"; so, therefore, the map exhibits are a reproduction in a map form of the information contained in Table No. I, and likewise all of this information will be carried on Table II of page 23, which I will explain.

Q. Before we get off these maps, I have one other question: Do these maps purport to show, or does this exhibit purport to show, the competition of carriers resulting from interchange arrangements or concurrences?

A. Not at all, even though there is a great quantity of such competition of carriers through combination of routes and under transit or joint through rates. Of course, in many instances, we find that type of competition, strange as it might seem, is very difficult to combat, and those direct carriers, due in many instances to personal desires of the shipper to support some small operator who is serving him, and in many instances they have felt that the small operator serves them better than a larger operator can. So that combination of competition is very plentiful and it is very real, too.

Q. Now, have you any further comments to make in regard to Table II shown on pages 23—

A. It goes to the end of page 36.

874 Q. Pages 23 through 36 in this Exhibit No. 6?

A. No, other than to identify it and show how it actually works.

Q. Please do so.

A. This table again analyzes 257 routes. This table, however, purports to show the actual names of the carriers operating between these particular points. That is, it shows it indirectly through the code number.

For example, take the first line between Albany and Boston. The first carrier shown there is code No. 41. If you will refer back to pages 8 to 10 in the numerical list of contents, and go down in numerical order until you find No. 41, you will have opposite that the name of the B. & S. Transportation, Inc. That indicates that the B. & S. Transportation, Inc., operates between Boston and Albany, and the same thing would follow in all of the other code numbers.

No. 93, which is the next number, is the Boston-Buffalo Transportation Company, and so on. I believe otherwise the exhibit speaks for itself.

Q. I believe you stated that this exhibit was prepared under your control and direction and from the compliance orders or certificates of these carriers mentioned therein.

A. That is correct.

Q. Will you explain that.

A. In a very few instances, the information was taken from recommended orders of the Commission, where they had not reached the status of a compliance order or certificate, but the analytical work was taken from an examination of the certificates and compliance orders and recommended orders.

Q. Of how many carriers?

A. Slightly over 600 carriers' certificates and compliance orders were actually analyzed. Again, I would like to say very strongly that this does not attempt to show all the competition. Lack of time and the lack of some of these certificates and compliance orders being made available prevented a complete analysis of all of the competition which exists.

Q. So that in addition to what is shown here, there is also additional competition of common carriers of commodities generally not set forth in this list?

A. There is no question about it. There is.

Q. And in addition to that, I believe you mentioned there was competition of the irregular route carriers, carriers of special commodities, rail carriers, private trucks, contract carriers, interchange carriers, and concurring carriers.

A. That is correct, and the Railway Express Agency.

Mr. JOSELOFF. At this stage, I would like to ask that this document be introduced as one exhibit, Mr. Examiner.

Exam. BAKER. Suppose you defer offering that until the cross-examination is completed.

Mr. JOSELOFF. Very well.  
876 Exam. BAKER. Cross-examine.

## CROSS-EXAMINATION

Mr. MACDONALD. I have a few questions, Mr. Examiner.

By Mr. MACDONALD:

Q. I would like to ask you, Mr. Howell, whether in this exhibit there is any breakdown of the carriers listed in terms of their annual volume and gross operating volume.

A. No, sir; no such attempt has been made at all.

Q. Is there any breakdown as to the number of vehicles they operate?

A. No, sir.

Q. Is there any indication as to the route miles operated by the individual carriers?

A. No.

Q. In the aggregate, the routes listed in this exhibit, referring to those routes, do they represent the combined operations of McCarthy and Consolidated?

A. Yes, sir; because the two companies' routes are practically parallel in their entirety, anyway.

Q. Are there any indications in regard to the carriers listed here as to the proportionate amount of this route which they cover?

A. I don't understand that question.

The WITNESS. Will you read the question, Mr. Reporter, please.

877 (Question read.)

The WITNESS. I would like you to explain more what you mean. I don't understand what you are driving at.

By Mr. MACDONALD:

Q. How can it be determined how much of the area contained in these maps is covered by any particular carrier?

A. The only way you can do that is to examine the different routes shown in Table II, and follow any one code number through. Now, if you will refer to Table II, I will show you just what I mean. In other words, you will find carrier 1012 there indicated quite frequently. It is between Boston and Albany; it is between Albany and Bridgeport, and Albany and Fall River, and Albany and Pittsburgh and Greenfield. You can follow that same procedure wherever that code number appears in any of these pages 23 to 36, inclusive, and you will find that where that particular carrier, which is referred to on page 10, will be found to be the Adley Express Company, and that same procedure could be fol-

lowed throughout. That is the only way that I would know as to how you could get that information.

Q. Then, there is no quick method by which we can determine the total routing of any one of these listed carriers?

878 A. Not from this exhibit.

Mr. MACDONALD. In view of that fact, Mr. Examiner, we would like to reserve the right to object to this exhibit until we have had further time to study it; and if it is possible for the applicant to question the witness without having the exhibit formally admitted, we will agree to that.

Exam. BAKER. I think you should complete your examination of the witness at this time, Mr. Macdonald. We have adjourned this hearing for two weeks now, and we cannot expect the applicant to keep bringing these witnesses back here. How long would you want to examine it?

Mr. MACDONALD. I think we would be able to state our position on it tomorrow morning.

Mr. JOSELOFF. Mr. Examiner, may I make this remark? We have established that this exhibit was prepared under the direction and charge of this witness. He has stated that the information is gathered from the compliance orders, certificates and recommended orders of the Commission. Now it strikes me that the remarks of counsel are directed more to the weight of the exhibit than to its admissibility. We have the man here who made the analysis and who made the examination, and he has explained the sources of his material. It is his exhibit, and I certainly think it could be at this time considered a regular exhibit of the applicant, and then if counsel requires further questions or further  
879 examination on it, it would go to the weight of it rather than the admissibility.

Mr. MACDONALD. Mr. Examiner, referring to Applicant's Exhibits Nos. 2, 3, and 4, which were admitted into the testimony, and one of which was admitted into testimony over our objection, the mere existence of further evidence on the part of the applicant as to the competitive situation is a more or less tacit admission that those original exhibits were not adequate. We did not have opportunity to examine the first two of those, and, consequently, we were not able to determine that they were not of probative value until the third of the exhibits was offered.

In this case, the same procedure is being started. This exhibit certainly has some bearing on the transportation and motor truck industry in the area to which it is pertinent, but the weight of it is the whole issue in this matter, because, unless it goes to the weight of the importance of each particular carrier, it is no picture at all, because a \$100,000 carrier is given the same importance as a \$2,000,000 carrier. In our view of the matter, there should be some

analysis of this situation, and that analysis is important in determining the admissibility, and not merely the weight, of the exhibit.

Exam. BAKER. Mr. Macdonald, I believe Mr. Joseloff's observation is that your objection is directed only to the weight of the exhibit, that the exhibit is competent evidence, and it will be received in evidence.

880 Mr. MACDONALD. I take an exception.

Exam. BAKER. Exhibit No. 6 will be received in evidence.

Mr. MACDONALD. Note the exception, please.

Exam. BAKER. Yes.

(Exhibit No. 6, Witness Howell, received in evidence.)

Exam. BAKER. Is there any further cross-examination?

Mr. MILLER. I believe I have one or two questions.

By Mr. MILLER:

Q. Mr. Howell, McCarthy does not serve New York.

A. By that, you mean New York City?

Q. New York City.

A. That is correct. They do not.

Q. Consolidated, however, does.

A. Yes, sir.

Q. But this exhibit does not attempt to show the carriers operating from New York City to the points served by the unified operations of McCarthy and Consolidated; is that true?

A. So far as from, to, or between New York City itself and other points, that is true. It may be well to explain that there will be other exhibits of a similar nature that will follow, and various carriers participating in this hearing have divided up the entire territory covered by the combine operation to arrive at some

881 kind of an order in presenting this testimony, showing competition which exists, and that part of the work which I assumed was, as I explained, north and east of Bridgeport, Conn. The Consolidated Motor Lines, I believe, for example, will cover the routes from Bridgeport to New York, Bridgeport to Philadelphia, and likewise the overhead routes, such as from other New England territory points into New York, such as Boston to New York, Boston to Philadelphia, Springfield to Philadelphia, and such points.

Q. Do you know of any one carrier in the New York-Massachusetts-Connecticut-Rhode Island territory having as extensive a coverage as Consolidated and McCarthy combined?

A. Yes. It is my opinion that there are one or two or three other carriers who have just as extensive rights.

Q. Could you name those carriers?

A. I would say Adley Express Company and Consolidated Motor Lines, and from a mileage standpoint I believe Hemingway

Brothers, Interstate Trucking Company probably have even greater mileage than Consolidated and McCarthy.

Mr. JOSELOFF. Does the New England Transportation Company cover the same extent?

The WITNESS. Yes; I believe I named the New England Transportation Company. If I did not, I certainly should.

By Mr. MILLER:

882 Q. Now, you said the information on which your exhibit was based was secured from compliance orders, certificates, and recommended reports.

A. Yes, sir.

Q. The exhibit does not, in fact, represent the carrier competition that you are now experiencing in your operation, actually, but rather potential competition; is that true?

A. No; I won't agree that it is potential competition. I would say it is very real competition.

Q. Well, let us take one carrier now, carrier No. 730, J. J. Sullivan, The Mover, Inc. Do you have any actual knowledge of his competition?

A. To some points. I certainly do not know of my own personal knowledge every little point that he operates to.

Q. He would be a minor competitor; would he not?

A. Only minor in the sense of the territory covered is not too extensive. I would very definitely take exception to any intimation that a small carrier between the points he covers is not real competition. As a matter of fact, we find more real competition with him than with the larger operator. I can give many instances of that, of more personalized service, and it is very difficult for the larger operator to compete with such types of operation.

Q. Would you say that a small carrier rendering personalized service does have a definite picture in the industry?

A. I certainly feel that they have, and always will have.

883 Q. Do you believe that this unification will, to a certain extent, eliminate a certain amount of personalized service?

A. Not under the plans as I understand them; no, sir.

Mr. MILLER. That is all.

Mr. MACDONALD. I have a further question, Mr. Examiner.

By Mr. MACDONALD:

Q. Mr. Howell, the compliance certificates and orders which you examined cover what dates generally?

A. Well, everything that was issued up to approximately six months ago.

Q. How far back do those dates go?

A. I honestly cannot tell when the first order was issued by the Commission—some time after 1935. I actually don't know.

Q. Then, the information which you have as to at least some of these carriers is at least five or six years old.

A. Yes; but I do not see that that lessens the weight of it at all. The certificate stands and may be in effect a hundred years from now, and it might be the same as it is today.

Q. The certificate does, but is it not possible that the operation, in order to be carried along, or at least to the extent to which it is granted in the certificate—

A. Quite true, but I believe the Act provides that any carrier that is authorized to serve certain routes is supposed to continue their serving such routes, unless he receives definite permission from the Interstate Commerce Commission to cease operating on such route. Therefore, we naturally assume, and I think it is quite proper to assume, that a carrier operating a route between two points is definitely serving all the points which he is required to by law.

Q. Do you know of your own knowledge that each one of those carriers listed here is serving the route that his certificate covers?

A. No man can say that to his personal knowledge.

Q. You depend on the certificate for your information?

A. To a great extent.

Q. Were some of these carriers irregular route operators?

A. In no instance have we used an irregular route operator, to my knowledge.

Q. Do you know of your own knowledge, or the knowledge of those who helped you in the preparation of this exhibit, that each of these carriers does operate as a general commodities carrier?

A. Only to the extent that their certificates or orders so read. I naturally assume that that is what they do.

Q. Do you know to be a fact that actually a great many carriers have been given rights to specialize in limited commodities?

A. No; I do not believe that is true—not from my experience with operators in New England.

Q. Are there not many operators from Paterson, N. J., and other textile areas operating into New England, which are textile carriers only?

885 A. A large part of the business might be textile, certainly. That is quite logical.

Q. As to general package freight which originates in the New England area and exchanged with other carriers, they would not be interested; would they?

A. Oh, I can't say. Oh, do you mean all carriers operating between Paterson and New England?

Q. I am speaking of that group concerned mainly in carrying textiles.

A. If we are considering any particular group interested in mainly carrying textiles, I presume then such carriers are not interested in the general commodities to any extent, but that does not mean that there are not other carriers that are interested in general commodities.

Q. You agree that there may be such carriers carrying limited commodities, in your exhibit?

A. I would agree with you this far, that there may be some carriers listed in this exhibit that have a fairly high percent of one particular commodity. Yes, it is quite possible, and yet they still might carry commodities generally.

Mr. MACDONALD: That is all.

Exam. BAKER: Is there any further cross-examination?

By Mr. OTT:

Q. Mr. Howell, will you refer to page 10 of your exhibit?

886 A. Yes, sir.

Q. The carrier following, shown opposite 1019, Louis J. Gardella, Inc. Is the number in front of that correct?

A. 1019?

Q. The following carrier, Louis J. Gardella, Inc.

A. In my exhibit opposite 1019 is Gablemann's Express.

Q. Following No. 1019?

A. Oh.

Q. Is that the correct number.

A. 1012. Well, I don't know what you mean, Mr. Ott. I have nothing here to check whether it is or not. I have not the actual work papers.

Q. That is a duplication of the number shown opposite Adley Express.

A. Well, in that case it is quite possible, Mr. Ott, that it is a duplication of the tariff in the Bureau, and it is possible that there should be a letter "a" after that; but, unfortunately, I can't check it for you right here. I will be glad to do so for you later, but I have not got the work sheets.

Q. From this position, should not that be 1020?

A. Yes. Referring to page 3, I believe it is indicated that the carrier is No. 1020 instead of 1012, and the exhibit should be corrected to show that.

887 Q. Using for purposes of illustration, page 15 of your exhibit, at the bottom of the page, Springfield and Worcester, 47 carriers shown on map B, I believe you answered previously as to the effect that you had no personal knowledge

that all of these 47 carriers, or any other number of carriers between two certificate points are actually operating today; is that right?

The WITNESS. Will you read the question, please, Mr. Reporter. (Question read.)

A. I could not answer from my own personal knowledge that altogether 47 are operating between two points, Mr. Ott. I could name a large number.

Q. Did you or those who made or may have worked on this exhibit make any attempt to check the actual number?

A. Not under the certificates and compliance orders of the Commission.

Mr. OTT. That is all.

By Mr. Fagg:

Q. Mr. Howell, turn to page 11 of Exhibit 6, where you show the total number of competing carriers by routes. Is that the competition which includes the services of Consolidated Motor Lines?

A. No, sir. This entire exhibit excludes both McCarthy and Consolidated Motor Lines.

Q. I see on page 19 of the exhibit, "McCarthy Express." 888 That has no connection with you?

A. None whatsoever.

Q. On your Exhibit No. 6, map A, you testified on direct that there were operating between Providence and Boston 78 lines, and in answer to counsel you said 78 lines, being such carriers as you have referred to. Does that mean contract, common carrier, or private carrier?

A. No, sir; those 78 carriers are 78 carriers, common carriers of commodities generally—general commodities over regular routes.

Q. Now, as a typical illustration of that, can you state what is the contract carrier competition, if any, between Providence and Boston?

A. I am not familiar with the names of any contract carriers. I could refer you to certain specific commodities on which I know there exists contract carrier competition.

Q. Would you start out, in answering that question, by designating the approximate number of contract carriers operating between Boston and Providence, if there are any?

A. There are some very definitely, but I would not attempt to state any number, Mr. Fagg, because it would be only a guess.

Q. You would not say that there were at least 25, or 10?

A. I don't believe there are as many as 25.

Q. Now, may I direct your attention to map B of Exhibit 6, showing 58 common carriers. As I understand your statement, they are operating between Bridgeport, Conn., and

Hartford. Does that include interstate carriers or intrastate carriers, or both?

A. I believe—you referred to them as 58—I believe this map shows 54.

Q. Fifty-four.

A. These are only such carriers who have interstate operating rights under certificates or compliance orders granted by the Interstate Commerce Commission. In no instance have we shown just intrastate rights accorded any carriers through their own State regulatory bodies.

Q. Are we to understand that the services and operations of strictly intrastate carriers are not shown on Exhibit No. 6?

A. That is correct.

Q. Again referring to the operation of 54 carriers from Bridgeport to Hartford, I note on map A that you show a series of local operations from Bridgeport to New Haven, and New Haven to Hartford; namely, 71 from Bridgeport to New Haven, and 45 from New Haven to Hartford. Is that number of services in addition to the 54 operating from Bridgeport to Hartford on map B?

A. No; it is not in addition. In other words, the 54 carriers would logically be included in the 74 shown between Bridgeport and New Haven.

Mr. Fagg. That is all. Thank you.

890 Mr. JOSELOFF. Just a couple of further questions, Mr. Howell.

Redirect examination by Mr. JOSELOFF:

Q. In answer to Mr. Miller's question as to large-sized companies comparable to McCarthy or Consolidated operating in the New England territory, I ask you whether or not the Seaboard Freight Line is such a company and does operate extensively in that territory.

A. Yes, sir; we have named Seaboard Freight Lines in that list.

Q. In answer to Mr. Fagg's question as to the number of contract carriers between Providence and Boston, you said you could not estimate them as 25. Could you safely say, based on your knowledge and experience, that at least 15 such contract carriers exist?

A. Yes; it is my belief and opinion that there are somewhere between 15 and 25 contract carriers' operations between those two points.

Mr. Fagg. Mr. Counsel, when you asked the witness about the Seaboard, did the witness use the Seaboard Transportation or Keeshin Transportation in the list of competing carriers shown on Exhibit 6?

Mr. JOSELOFF. Yes. You might ask the witness that question.

The WITNESS. The Seaboard is included in this exhibit as  
891 a competing carrier.

Mr. FAGG. Where?

The WITNESS. At least, it is supposed to be.

Exam. BAKER. Seaboard Freight Lines.

The WITNESS. On page 6 will be found Seaboard Freight Lines,  
Inc., No. 1058.

Mr. FAGG. I find it now, 1058 on page 10.

The WITNESS. That is correct.

By Mr. JOSELOFF:

Q. In answering a further question as to whether or not this exhibit 6, Mr. Howell, contains carriers who specialize in specific commodities, but nevertheless do carry general commodities, and have general commodity rights, you stated, I believe, that there are some such carriers that do so. I ask you whether or not that is a very minor portion or a substantial portion.

A. It is a substantial portion of that particular traffic, and which they have a right to serve.

Q. But in comparison to all of the carriers you have listed here, would that be so?

A. It is very minor.

Q. Could you translate that percentagewise, if possible?

A. I would not even think it would be one percent of the total tonnage involved.

Q. Now, questions were asked you as to your personal  
892 knowledge of the number of carriers operating between specific points. I believe Mr. Fagg asked you whether or not you knew of your own personal knowledge that there were. I think, 47 carriers operating between Springfield and Worcester, we will say. I believe that was the question, and while you stated that you do not know of your own personal knowledge all of them, I ask you whether or not, from your many years of experience in traffic work in connection with the McCarthy Freight System and in New England, and from your many years of experience at traffic meetings, and in traveling in and about this territory, and from your many years of experience in connection with sales and with motor problems generally, you can say that you do know, of your own knowledge, that a substantial portion of these carriers do operate?

A. Yes; very definitely. I, of course, could name any number from my own personal knowledge that operate between points on the highway, but my answer was that I could not identify the entire 47, and I do not believe anybody could. The only way

you could possibly do it—would be to actually see the operation of every one of these carriers.

Q. Is it your opinion that this exhibit represents a more complete picture, for the reason that it is based on the information in the Commission's files, than a mere oral statement or general statement of your own personal knowledge?

893 A. I certainly feel it does. I feel that the basis of this type of exhibit, the source of it, is the best and soundest that is available, much more so than just my own opinion whether a certain carrier operates between Boston and Pittsburgh or any other point.

Mr. Fagg. Your reference is entirely to interstate operators, Mr. Joseloff?

Mr. JOSELOFF. Entirely to interstate operators, Mr. Fagg.

Exam. BAKER. Are there any further questions of this witness?

Mr. MILLER. I have one more question.

Re-cross-examination by Mr. MILLER:

Q. Mr. Howell, what carrier would you say is McCarthy's principal competitor?

A. We have so many that I do not believe I could say that there is any one principal competitor.

Q. I believe you did state that McCarthy and Consolidated would extend their operations over each other's routes.

A. Yes; generally speaking, we have about the same operating rights, except in New York City, and beyond that they have more extensive rights in New York State.

Q. The competition between your lines is rather keen, is it not?

A. Oh, certainly. It is rather keen, the same as it is with a half a dozen others, Adley, New England Transportation,  
894 Seaboard—

Q. Would you say Consolidated is the largest of your competitors?

A. No; I cannot say honestly that that is true.

Mr. MILLER. That is all.

Mr. MACDONALD. Mr. Examiner, I have one more question.

By Mr. MACDONALD:

Q. Mr. Howell, would you, for the record, indicate your opinion of Mr. McCarthy's statement as to the importance of Consolidated as a competitor of yours?

A. I don't believe I heard Mr. McCarthy's opinion.

Mr. JOSELOFF. Before you answer that, Mr. Howell, I was going to say that I do not believe the witness would be qualified

to answer that question. I think it is beyond the scope of his examination. The witness was not here, and I cannot see its relevancy.

Mr. MACDONALD. Was he not qualified to answer as to McCarthy?

Exam. BAKER. I do not see the pertinency of the question. The objection is sustained.

Mr. SULLIVAN. If he did, he might be fired.

Mr. MACDONALD. I did not hear you, Mr. Examiner.

Exam. BAKER. I say the objection is sustained.

Mr. MACDONALD. That is all.

Exam. BAKER. The witness is excused.

The Witness. Thank you.

893 (Witness excused.)

Exam. BAKER. Do you have another witness, Mr. Sullivan?

Mr. SULLIVAN. Mr. Examiner, I am going to put Mr. Reicher on the stand, but I would suggest, if we are going to take the morning recess, it should be done before he goes on as an accounting witness, rather than to break into his examination a few minutes after he starts, although it does not make any difference to us.

Exam. BAKER. That probably would be preferable. We will take a recess.

(There was a short recess taken.)

Exam. BAKER. Come to order. You may proceed, Mr. Sullivan.

Mr. SULLIVAN. At this time, Mr. Examiner, I want to carry out an obligation that I assumed last week, or two weeks ago, and that was to furnish a copy of these papers relating to the Arrow-Transport deal.

So, in accordance with what I recollect of your instructions in the matter, I have procured a copy for the record of the original contract. Other people were not interested, as I remember it, in the agreement at the time. I do, however, have the things that they are interested in, and we have photostats to supply everybody. That is the list of extension agreements and the contract for the purchase of the Arrow stock by the old Transport Company.

896 Exam. BAKER. The original contract was incorporated by reference.

Mr. SULLIVAN. Yes.

Exam. BAKER. So it will not be necessary to incorporate it physically here. If you will pass up the others, I will have them marked for identification.

Mr. SULLIVAN. For identification or in evidence?

Exam. BAKER. Well, first, for identification.

Mr. SULLIVAN. I have not any witness to put on with respect to them.

Exam. BAKER. Would you let me see them?

Mr. SULLIVAN. I forget what the arrangement was. I thought at that time he had testified to that, Mr. Arnold had. I am going to leave them in groups, if you do not mind, so that I can distribute them.

Exam. BAKER. Yes.

Mr. SULLIVAN. And here is the letter.

Exam. BAKER. Off the record.

(Discussion off the record.)

Exam. BAKER. Back on the record.

The following documents will be marked for identification: "Copy of a letter dated April 7, 1941, addressed to the Transport Company, New York, N. Y., will be marked for identification as "Applicant's Exhibit No. 7."

(Exhibit No. 7 was marked for identification.)

897 Exam. BAKER. The agreement between the Transport Company, John E. Ackerman, and others, dated September 23, 1940, will be marked as "Applicant's Exhibit No. 8," for identification.

(Exhibit No. 8 was marked for identification.)

Exam. BAKER. The document entitled "Lease," which is dated September 24, 1940, and executed by Arrow Carrier Corporation and the Transport Company, will be marked as "Applicant's Exhibit No. 9," for identification.

(Exhibit No. 9 was marked for identification.)

Exam. BAKER. And the document entitled "Agreement Amending Lease," dated April 9, 1941, will be marked as "Applicant's Exhibit No. 10," for identification.

(Exhibit No. 10 was marked for identification.)

Exam. BAKER. Do intervenors have any objection to the introduction of these documents into evidence? They are furnished according to a request made of the witness Arnold, when he was on the stand.

Mr. WIPRUD. No, sir.

Exam. BAKER. Applicant's Exhibits 7 to 10, both inclusive, will be received in evidence.

(Exhibits Nos. 7 to 10, inclusive, were received in evidence.)

Exam. BAKER. Let us proceed, Mr. Sullivan.

Mr. SULLIVAN. All right.

I will call Mr. Reicher.

898 HARRY J. REICHER, being first duly sworn, testified as follows:

Direct examination by Mr. SULLIVAN:

Q. What is your name, please?

A. Harry J. Reicher.

Q. And your residence?

A. West End, N. J.

Q. What is your business, Mr. Reicher?

A. I am a certified public accountant, with offices at the Empire State Building, New York City.

Q. Mr. Reicher, in what institution or institutions did you study accounting?

A. I studied accounting at New York University, and studied law at the New York Law School.

Q. Have you a degree in accounting?

A. Yes, sir.

Q. And have you a degree in law?

A. Yes, sir.

Q. You have been a certified public accountant for how long?

A. I have been certified for approximately fifteen or sixteen years.

Q. Are you a member of some firm?

A. Yes, sir; firm of Harry J. Reicher Company.

Q. Now, with respect to Harry J. Reicher Company, are you an officer of that company?

899 A. Yes, sir.

Q. What?

A. I am senior partner.

Q. Does that firm maintain a staff of accountants?

A. Yes, sir.

Q. How many accountants?

A. Well, it varies from approximately sixteen to forty.

Q. Depending upon the time of the year and how busy you are?

A. Yes, sir.

Q. Mr. Reicher, in the course of your accounting business experience, have you had occasion to examine and deal with the accounts of various sorts of enterprises and businesses?

A. Yes, sir.

Q. In your official capacity?

A. Yes, sir.

Q. And would you indicate to us some of the types of businesses which you have had occasion to deal with?

A. Well, we have examined department stores, foundries, banks, insurance companies, trucking companies, truck rental companies,

parcel delivery companies, various types of manufacturing companies. I guess it is rather a general list of companies.

Q. Are you also a practitioner before the Treasury Department?

A. Yes, sir.

Q. And you do tax work as well as general accounting work?

A. Yes, sir.

900 Q. So that you are familiar with the rules and regulations of the Treasury Department with respect to taxes?

A. Yes, sir.

Q. Are you familiar with the rules and regulations prescribed by the Interstate Commerce Commission with reference to keeping of accounts?

A. Yes, sir.

Q. And you have dealt with those rules for some period of time?

A. Yes, sir.

Q. Mr. Reicher, during the year 1940, did you have occasion to audit the books of a number of trucking companies in connection with the proposed acquisition by a corporation known as the Transport Company, of certain trucking companies?

A. Yes, sir.

Q. How many, approximately, trucking companies' books did you audit at that time?

A. There were approximately twenty-eight or thirty trucking companies and ten or twelve affiliated companies.

Q. For the record, Mr. Reicher, some exhibits were presented by you and testimony was given before the Interstate Commerce Commission with respect to those audits in the case MC-F-1223, 1244, and 1264; were there not?

A. Yes, sir.

901 Q. Now, Mr. Reicher, were you employed, or was your firm employed, to audit the books of the companies involved in this application?

A. Yes, sir.

Q. And by whom were you employed?

A. Employed by the directors of the Associated Transport.

Q. Approximately when was that?

A. That was approximately the middle of June 1941.

Q. Were you given some instructions at the time of your employment?

A. My instructions were generally contained in a contract executed by the general companies, and our assignment consisted primarily of ascertaining the correct net profits for the 12 months ending April 30, 1941; determining the net worth of the companies at April 30, 1941, and determining the amount of preferred

and common stock to be distributed among the stockholders of the various companies.

Q. The contracts to which you refer, and in which are your principal instructions contained, are the contracts referred to in the application in this case, namely, the contracts described herein as Exhibit C-1 in the Form 45 application and Exhibit C-2; is that correct?

A. That is correct.

Mr. SULLIVAN. I beg your pardon. Change the record—C-1-A

Exam. BAKER. Off the record.

(Discussion off the record.)

902

Exam. BAKER. Back on the record.

By Mr. SULLIVAN:

Q. Well, C-1 and C-1-A, B, et cetera, in the application; is that right?

A. I really don't know the numbers.

Q. You familiarized yourself with the contract; did you?

A. Yes, sir.

Q. With respect to that contract, was there made available, in construing it, the services of an attorney?

A. Yes; sir.

Q. Who was that attorney?

A. Mr. David Benetar, of the firm of Nordlinger, Riegelman & Cooper.

Q. Was that firm retained by the directors of Associated Transport for the purpose of having an independent attorney, one not associated with any of the trucking companies, pass on the interpretation of such matters?

Mr. WIPRUD. Just a minute. I object.

Exam. BAKER. I see no objection to a preliminary matter such as this. You may answer.

A. That is correct, sir.

By Mr. SULLIVAN:

Q. Pursuant to your instructions, Mr. Reicher, as given to you, and as contained in the contract, and which you have generally described, what did you do next?

903

A. We prepared an audit program, consisting of about 20 pages, which outlined in detail the various steps to be taken by all of our men in making their respective examinations.

To begin with, our job necessarily involved two audits. First, we had to examine the balance sheets of the various companies at May 1, 1940, to ascertain whether the conditions as reflected at that time by the companies' books—that is, the condition as reflected at that time by the companies' books was correct. Then we had to

examine the balance sheet as of April 30, 1941, to ascertain the accuracy of the balance sheet at that date.

Arriving at two correct balance sheets, the beginning and the end of the particular 12 months that were examined, we then knew that we would arrive at a correct profit or loss for the 12 months' period. More particularly in examining both ends of the balance sheet, we took steps; and I will try to be just as brief as possible in outlining them.

Q. At the same time, I want you to go into some detail with respect to at least some of them, so that the methods you followed will be clear to all of us.

A. Yes, sir; I will discuss this in order of the balance sheet as outlined by the Commission. First, as to the cash, to ascertain the accuracy of the cash, we confirmed the bank balance, reconciled the bank statements with the companies' books, and in our confirmations we requested the banks to advise us what the balances were, whether there were any moneys due, and if there were whether there was any security pledged for same.

In examining the cash, we incidentally examined the May and June receipts and disbursements, both in 1940 and 1941, to detect whether any payments were made, either in May or June 1941, which were applicable to the current 12 months with which we were concerned, whether any payments were made during May and June 1940, to detect whether the companies received any funds representing income applicable to a prior year.

In the course of that examination, we also looked for any expenses that might have been recorded within the 12 months, April 30, 1940, to April 30, 1941, and if there were any we would eliminate those expenses and allocate to the prior year. That type of examination was made with respect to all of the accounts and with all the books that we examined.

With respect to working funds we confirmed—at least, we circularized the various custodians of the working fund to ascertain whether their working funds were in cash or in expenses. When they were in expenses, we eliminated the expenses from the working funds and charged the expenses against their respective accounts, and, incidentally, so stated the working funds correctly.

There, too, we examined the May and June 1940 and 1941 vouchers. Special deposits were confirmed by circularizing the various utility companies, and in several cases we discovered that some of the deposits were no longer in existence, or perhaps used up in the form of bills. Those were adjusted and written off.

Now, with respect to such items as notes receivable, wherever the notes were still available and unpaid, we examined the notes.

If there were notes which appeared to be bad, they were written off. We circularized the drawers or makers of the notes, and wherever they were not in agreement with the documentary evidence that we had, we adjusted the notes.

Receivables from the associated companies were circularized and, wherever possible, we examined the books of the associated companies to see whether what appeared to be a receivable of one company was payable on the books of the other company.

Now, with respect to accounts receivable of those companies which maintained accounts-receivable ledgers, the job presented no particular problem. We were able to examine the April 30, 1940, and April 30, 1941, schedules of accounts receivable and checked them to make sure that the company actually had those accounts receivable at that date. However, where the F. B. Pow-

906 ers of Remington-Rand systems may have been employed, we secured tapes of the open accounts as of the date of the examination.

Say that we were making an examination in July of April 30th. We would have secured a tape as of July 10th, let us say. Then we had to prove the figures as of April 30th by working the July 10th figures back to April 30th, and the process of doing that was by eliminating from these July 10th figures the receipts and shipments made between April 30th and July 10th. In that way we proved that the accounts receivable as of April 30th were correct.

All accounts that were in amounts exceeding \$200 were circularized. We then prepared schedules of the unpaid April 30th items, as of July 10th; so that if any account receivable dated April 30th was unpaid on July 10th, we had a schedule of it. From that schedule we were able to determine the validity or the collective validity of the various accounts. The accounts that were bad were written off to the reserve funds, collectible accounts.

In connection with the interline accounts, we examined both ends—that is, April 30, 1940, and April 30, 1941—to see whether proper prorations were made, setting up the correct interline account payable and reducing the revenue at both ends, or perhaps increasing the revenue, the effect being that if the company failed to make a correct proration at April 30, 1940, there was a possibility that they paid interline carrier charges which were applicable to the prior period. We would, of course, reverse that, giving effect to the correct result; and, on the other hand, if the company failed to make a correct proration at April 30, 1941, we would determine the correct liabilities as of that date by examination of the interline statements and give effect to the

correct amount of revenue to be transferred out of the current 12 months and into the succeeding year.

We also examined into overcharges or claims; and set up the adjustments for those. Incidentally, I might add that the result of the various adjustments in each company varied anywhere from perhaps 80 to 150 in number.

Q. Explain more what you mean by that, Mr. Reicher.

A. Well, in order to correctly give effect to the profit or loss for the 12 months we had, as I previously explained, to examine the accounts at April 30, 1940, and again at April 30, 1941. The cost for the adjustments as we observed it was essentially due to the fact that on April 30 that was the closing date of these companies, and they were not too concerned about any differences that might exist at that particular date; that is, no important differences, perhaps, of treatment, but with respect to the contract adjustments, it gave effect to a great number of adjustments, because under the contract the reserve fund for uncollectible revenue had to be treated in a way entirely different from anything practiced by the companies, apparently.

The treatment of prepaid tires and depreciation was entirely different from anything the companies previously indulged in. The depreciation adjustments in this contract were intended to equalize depreciation cost among all the companies so as to give effect and equalize book value for all equipment of all the companies, though in the past these companies were not too much concerned about what the book value was of their competing lines, or what the other carriers were doing. I trust that with that explanation it is—

Q. But what I had further in mind was that you mentioned that you had to make a certain number of adjustments with each one. There were adjustments as a result of those things which you have just described.

A. Yes.

Q. The adjustments are either upwards or downwards, as the case might be.

A. Oh, yes.

Q. But they were numerous, as you described them, with respect to each company.

A. That is correct.

Q. Proceed now.

A. Now, with respect to materials and supplies, that gave us a particularly difficult problem because, while the companies took inventories at April 30, 1941, they did not take inventories at April 30, 1940, primarily, I suppose, for the reason that they had cause for taking an inventory at April 30,

1941. It is not customary to take an inventory every month. So the way we proceeded to determine the correct disposition of any difference in inventories at April 30, 1941, was as follows:

We would first examine the inventory submitted to us. Test checks were made to observe whether the prices were substantially correct. We then test checked the parts on hand in the main terminal by actually going into the different departments and requesting certain items, and where they were no longer in existence we would secure explanations.

Q. Excuse me. May I interrupt you here?

A. Yes, sir.

Q. When you requested "certain items, from what source did you determine to request an item?

A. Our requests were made from the inventory sheets that were had, and our test was further along the lines that we would look for items which were the most costly. It would be impossible for us to make a test of lock nuts or bolts, or things of that kind; but, on the other hand, it was very simple for us to take motors, transmissions, springs, and items of that kind.

910 Satisfying ourselves that the inventory submitted was reasonably correct, we would then compare that inventory with the inventory reflected on the company's books, and assuming that the inventory on the books was \$50,000, and the inventory in accordance with our schedule was \$60,000, or an increase of \$10,000, the question then presented itself was whether this \$10,000 reflects an additional profit for the 12 months, or whether the \$10,000 arises out of inconsistencies or inaccurate handling of the inventory accounts over a period of years prior to the current year.

I indicated previously that some of the companies had taken inventories on April 30, 1940. Well, in one of the cases, the case of the Horton Motor Lines, there was a difference of, I believe, about nine or ten thousand dollars—a difference downward of nine or ten thousand dollars. That is, the inventory was less than the inventory reflected by the company's books.

Q. That is, the physical inventory?

A. The physical inventory was less than the inventory reflected by the company's books. Well, our task there was to determine whether that nine or ten thousand dollars should be charged against the current year or charged to prior years; or, stating it accountingwise, charged to surplus account.

We discovered that the previous inventory taken by the  
911 company was on March 31, 1940, and by examination of that inventory we found that the inventory was taken on approximately the same basis as the inventory of April 30, 1941.

Consequently, we arrived at two correct points, one being March 31, 1940, and the other April 30, 1941, and therefore decided that this difference of nine or ten thousand dollars was allocable to the period between March 31, 1940, and April 30, 1941. We accordingly charged twelve-thirtieths of this nine or ten thousand dollars to the current year.

Q. That had the effect of doing what?

A. The effect of it was to reduce the company's profit by that amount.

Q. And, in turn, it had an effect on the distribution of the common stock that they proposed?

A. In effect, it reduced the preferred stock which the stockholders of the Horton Motor Lines will receive, and it reduced the common stock which the stockholders of the Horton Motor Lines will receive.

To illustrate the point once more, in the case of Barnwell Brothers, we found that there was a difference, if my memory serves me correctly, or \$12,000 in the inventories. We found that the last inventory taken preceding April 30, 1941, was on September 30, 1940, and we employed a little different formula in our trying to arrive at the correct result. There we determined the parts expense between October 1, 1940, and April 30, 1941, took a percentage of that parts expense to the revenue for the period and applied that percentage against the revenue for the missing months of May 1, 1940, to September 30, 1940. That gave us the missing period and we adjusted our inventories along those lines.

Incidentally, in the examination of the inventories, we were concerned with parts, tires, tubes, stationery, including way bills, bills of lading, chains, et cetera.

Q. Tire chains?

A. Tire chains. We were particularly careful to limit the inventory of rebuilt parts to 50 percent of their original cost. Obsolete material was eliminated. We secured certificates from the parts department clerks to that effect. We only inventoried new chains and eliminated old chains.

We, of course, examined the inventories to be sure that they did include such items as shop equipment, furniture. We have found in other instances that some of the companies made a mistake when they took inventories to include such items. We prepared schedules of purchases for the 12 months ending April 30, 1940, and the 12 months ending April 30, 1941, to further test any increase in the inventory, and through these schedules we can see whether the purchases were particularly heavy in the latter part of April 1941, as compared to the latter part of April.

1940. If the purchases are heavy, there would be a  
913 justification for an increase in the inventory.

Q. You simply mean that because the purchases were heavy you would not increase the inventory?

A. No; it was a simple matter to check.

Q. That is what I mean.

A. It was helpful, in conjunction with all of the other things that we have done. In connection with structures, such as buildings and the like, we examined into the various accounts for the years 1939 and 1940, to be sure that anything that was charged to those accounts were proper charges, and that items that did not belong in there were not capitalized.

Now, with respect to the revenue equipment, we prepared detailed schedules of all of the equipment owned by the companies at April 30, 1941, and during the year 1940. That was merely to include equipment sold during the year, which did not appear in the company's assets at April 30, 1941. These schedules were prepared on sheets with about 20 columns, and we started with the date of acquisition, be it 1929 or 1930 or 1935 or 1936, and in the next column we would show any additions made to that equipment by the company, or as reflected by the company's records.

We would then show the company's depreciation on the equipment up to April 30, 1940. We would then show the depreciation taken by the company for the year ending April 30, 1941.

914 We would then get the total equipment. We would then get the total reserve for depreciation as of April 30, 1941.

Provision was also made in this schedule, through our own computation of depreciation, based on the rate stipulated in the contract, so that after we applied the rates we had the correct depreciation from the time of the inception of the particular vehicle to April 30, 1940. We then computed the depreciation for the year April 30, 1941, and we had the reserve by adding the depreciation for the 12 months ending April 30, 1941 to the accumulated reserve at April 30, 1940. Then we had the reserve at April 30, 1941.

As I say, this procedure was followed for each vehicle, and in a final summation we arrived at a total depreciation taken by the company up to April 30, 1941, which, when compared with our depreciation based on the contract rates, reflected by the depreciation taken by the company and reported by us, or as reflected by us. An entry would be made of that difference, debiting or crediting the reserve for depreciation account, and likewise affecting the surplus account; so we found that if the company had taken more depreciation during the period prior to April 30, 1940, than the contract provided for we would increase the company's book value to that extent and also increase the surplus

account, without affecting the profit or loss for the current period.

Now, for the difference between the depreciation taken  
915 by the company for the 12 months ending April 30, 1941,  
and as computed under the provisions of the contract, we  
would make an entry reducing or increasing the company's de-  
preciation, which, incidentally, affected its profit or loss for the  
period—that is, for the 12 months.

The contract provided that the companies were not to capitalize  
any rebuilding during the ownership of the equipment unless the  
book value of the equipment was less than 80 percent of its original  
cost, and they were permitted to recapitalize the building costs  
if the book values were less than 20 percent of the cost.

We prepared a schedule, or at least on the schedule I described  
before, we indicated the items which were capitalized, and in  
selecting the items to be capitalized we examined the various  
repair orders and inquired into the nature of the repairs.

The contracts also provided that if any work was done on  
equipment in connection with getting it ready for service, it  
could be capitalized. Our examination included that kind of  
work, to be sure that we equalized the operations of all the com-  
panies, and that the treatment was the same in every instance.

In order to satisfy ourselves that the company really owned,  
or at least that the company really had possession of equipment  
which we listed on our schedules, we test checked the sched-  
916 ule against insurance records and also against drivers' trip  
cards. That was a twofold job. It resulted in indicating  
the company's operating equipment as of April 30, 1941, and  
also, in many instances, or in several instances, at least, it de-  
veloped that the companies were using equipment which did not  
belong to them, and on investigation we found that it was hired  
trucks, and in that way assisted us in determining whether the  
liability was on the company's books for those hired trucks.

We made tests with license plates, and satisfied ourselves that  
the companies owned all of the equipment that we listed on all our  
schedules. We found a particularly difficult problem with respect  
to units acquired through the acquisition of other companies or  
purchases as second hand or used equipment. There we were con-  
fronted with the rate of depreciation that we were to apply against  
used equipment. Naturally, the rate to be applied against used  
equipment should be higher than the rate applied against new  
equipment, and just to indicate some of the problems that presented  
themselves, we first went off on what I considered was the wrong  
foot.

Again, in the case of Horton Motor Lines, we proceeded on this theory, that a company buying a used truck is virtually in the same position as a company which purchases a new one, and their operating cost should be charged the same amount as depreciation, and for the same period of time that a new vehicle would be depreciated over, and to illustrate that point Horton acquired some units through its acquisition of Poole, and we proceeded to this: We said, "This one truck cost \$3,000 when new," and the equipment—

Q. Excuse me. Let me interrupt you, without getting you off the track. What did you find out as to whether it cost \$3,000 when it was new?

A. We made inquiry of the respective manufacturers or dealers in the particular vehicles, or wherever possible we would refer to such records of the selling company, if they were available.

We then proceeded to report this piece of equipment on the company's books at its cost, say, \$3,000. Under the contract rates, we determined that the rate of depreciation should be 20 percent per annum. Assuming that the vehicle was 3 years' old, we would have taken 60 percent depreciation. Theoretically, we would have been set up \$1,800 for reserve depreciation, and further assuming that only \$500 was paid for the equipment, we assumed that the company earned \$700 by buying this piece of equipment. In other words, we were trying to put Horton's purchase of a used piece of equipment on the same basis, as, perhaps, Consolidated purchase of a new piece of equipment. The result was that we charged off, by this process of reasoning, \$1,200 to the depreciation expense account when, as a matter of fact, the equipment only cost \$500 in the first place.

While this picture may appear to be entirely incorrect, nevertheless there was some justification for it, because, while we charged off \$1,200 to the depreciation expense account we nevertheless picked up \$700 in the surplus account.

Q. Which would have the effect of destroying earnings, or might it or might it not?

A. That is correct. The result of it was that we were actually writing off more than the cost of the equipment, in effect, a practically incorrect—

Q. So what did you do about it?

A. We changed that procedure and employed the procedure I am outlining now with all of the companies. In our schedules, we indicated the cost of equipment when new, applied the depreciation rates, the new depreciation rates, but stopped before the depreciation on equipment when it reached 95 percent of the original cost. I failed to indicate previously that the contract provides for

a 5 percent salvage on all equipment—that is, all revenue equipment; and, consequently, with respect to all the equipment we only depreciated 95 percent, and permitted a 5 percent salvage value to remain on the company's books.

Q. As you went along, Mr. Reicher, you would apply practical tests, as you have indicated previously. Did you apply  
919 these practical tests to the results you got, in substantially every case, to determine whether or not the formula was producing a correct practical as well as a correct theoretical result?

A. Yes, sir.

Q. And the illustration you just gave us here with respect to Horton was a case in which, as a practical matter, you found you had distorted earnings in the particular year, and so you changed it and applied a formula that would avoid distortion.

A. That is correct.

Q. And that was true throughout all of your audits.

A. Yes, sir; we applied the same formula in every case.

Q. And, incidentally, when you made this discovery with respect to Horton Motor Lines, that applying the formula as you originally had it would produce this original result, did you go back to the other companies and make the same change in the audit with respect to those matters?

A. Yes, sir. That was my particular duty. I was away from my office on the road for the greater part of the period when this examination was made.

Q. Well, as long as you have raised that point let us go into it for a minute. How many auditors did you use in making these examinations that you are describing to us?

A. Well, they fluctuated from sixteen to about twenty-two or twenty-three men.

920 Q. And they went to the offices of the companies involved?

A. Yes, sir.

Q. And made their audit there?

A. Yes, sir.

Q. Did you have a number of men at each company?

A. Well, the small companies had two men and the larger companies had four or five men.

Q. And they were there for considerable periods of time?

A. They were there approximately two months.

Q. Then you yourself went around from time to time to the offices of the companies?

A. Yes, sir.

Q. And conferred with your men and checked the results as they went along?

A. That is correct.

Q. And examined the adjustments that they were making?

A. Yes, sir; and approved the adjustments.

Q. Part of what you were doing was checking to see whether the result was both theoretically correct and practically correct?

A. That is correct.

Q. Were you also in constant communication with your men practically from day to day, during this time while they were out in the field?

A. Indeed, I was. When I was not with them, we had been writing letters to them, telling them the things we discovered on one job, and which were to be corrected because there inconsistencies being produced with respect to the books.

Q. Just one more question along that line: While the companies followed the Interstate Commerce Commission's system of accounts, nevertheless would a variation, as regards all of the companies, in the manner in which they handled particular items, result?

A. Yes; there was.

Q. And you also had to take that into consideration in trying to produce a uniform result; did you not?

A. Yes, sir.

Q. And you did take it into consideration?

A. We did.

Q. Will you now continue, Mr. Reicher? You have just finished talking about changing your formula on depreciation as a result of discovering in the Poole deal that they used rebuilt equipment.

A. Incidentally, we also checked the cost of the equipment. I say we test checked the cost of the equipment with invoices received by the company.

Q. By that you mean new equipment?

A. New equipment.

Q. And that is other than and in addition to the description you gave us of checking the actual price, the original price of any used equipment?

922 A. That is correct. I might also state that when the job was completed and all the men were back in our office, we compared the cost of the equipment for all of the companies. In other words, we looked to see whether a certain model of Mack was approximately the same cost all the way through, and the same thing as to the cost for Autocars, Fords, and G. M. C.'s and other makes, and we found that the cost prices on the companies' books were substantially the same.

We prepared comparative schedules showing the book values of all of the equipment, and compared them as between the various companies, and found that the book values compared fairly well. As a matter of fact, we have an exhibit which would show the book values of the various types of equipment, and which book values were employed in determining the book value of the total revenue equipment included in the balance sheet.

We have written to banks and others to determine whether any of this equipment was pledged, and checked the responses. In respect to shop and garage equipment, furniture and office equipment, and leasehold improvements, we examined the 1939 and 1940 additions to these accounts, and satisfied ourselves that the additions were really shop and garage equipment and furniture and office equipment and things that belonged in the accounts.

923 We then applied the depreciation rates outlined in the contract and compared them with the depreciation rates taken by the companies, and made adjustments similar to those I explained in connection with the revenue equipment accounts.

With respect to leasehold improvements, we checked the items that went into that account, and wrote the leasehold improvement off over the life of the original lease, without giving any consideration to any renewal or optional period contained in the lease.

This was true with respect to improvements other than structures on leased properties. Where there were any structures on leased property we depreciated those on the basis of either the term of the lease, including the option, or the nature of the asset: so that, assuming it was a brick building, we would take, perhaps, a 2 percent depreciation rate per annum, providing the lease was for at least 50 years. If the lease was for only 25 years, we would take a 4 percent depreciation.

With respect to the organization expense, franchises, and permits, the contract provides that all organization expenses are to be written off, and, accordingly, we had two moves to make with respect to that item; first, to write off any balance which was on the company's books at April 30, 1941, and, second, to reverse any charges that the companies may have made to their expense account for these intangible items, the theory being that the intangibles should have been written off whenever they were acquired.

924 Q. That had the result of eliminating intangibles from the assets?

A. That is correct. All the intangibles were written off the balance sheets of the respective companies. With respect to prepayments, such as taxes, licenses, insurance, interest, and rents, we determined the correct amount of the prepayment account at

April 30, 1940, and again at April 30, 1941, and any difference between the actual prepayment account at April 30, 1940, and the books was charged or credited to the surplus account. Any difference at April 30, 1941, after giving effect to this adjustment at April 30, 1940, was debited or credited to the profit and loss for the period.

The treatment with respect to prepaid tires and tubes was more specifically outlined in the contract, which provides that prepaid tires are to be inventoried at 50 percent of their original cost. Accordingly, we prepared a schedule of all of the equipment owned, indicating the number of wheels, which gave us the number of tires on all trucks, tractors, and trailers. We inventoried those tires according to the sizes, and arrived at the amount of prepaid tires and equipment at April 30, 1940, based on 50 percent of the original cost. We did the same as at April 30, 1941.

925 We then took into consideration any additional spares that the companies may have had, and any difference existing at April 30, 1940, was debited or credited to surplus account, and any difference at April 30, 1941, was charged to operations or credited to operations for the current year.

Incidentally, in connection with prepaid items, and to indicate the attempt we made to equalize the earnings of these various companies, we started out on the theory that all companies had approximately the same number of spares, and when we got down to the southern companies we found that they had more spares than were necessary to allocate one spare to a truck and one to a trailer. When we got north, we found that the policy of the companies was somewhat different. They did not have a sufficient number of spares to allocate one spare to a truck and one to a trailer.

I failed to mention that at the inception we proceeded on the theory that all of the companies had at least one spare for a truck and one for a trailer, and assuming that theory to be correct, after we determined the amount of prepaid tires on vehicles, we allocated one spare to a truck and one to a trailer and arrived at the total number of prepaid tires owned by the companies, and until we discovered that the companies in the North did not have sufficient spares to allocate one to a truck and one to a trailer. And at such time when we discovered that the

926 northern companies did not have sufficient spares to allocate one spare to a truck and one to a trailer, we had to change our entire process of reasoning and work with the actual inventory of spares, in addition to the prepaid tires on all equipment.

Incidentally, the reason we followed the theory of applying one spare to a truck and one to a trailer was that we wanted to ignore

the inventory of spares which the companies might have given us, because we thought, or at least I thought, that in the inventorying of spares they gave us some shoes that were perhaps 95 percent gone, and the shoe may not have been worth any more than the rubber itself, and in order to avoid any such possibility, I thought that every company would have at least one good spare for each truck and each trailer; but I found that the theory did not work out and changed it.

Q. Well, you found the practice in the North not to carry spare tires, I imagine.

A. That is correct.

Q. Whereas the practice in the South is different.

A. That is correct.

Q. Excuse me, but you did make a test check after you changed your practice against the inventory of spares to ascertain if they were in reasonable condition.

A. Yes, indeed. Not only that, but there were so few spares in each case in excess of those on the trucks that it was  
927 almost negligible, it was an unimportant item.

With respect to the liabilities now, as to the notes payable and also as to accounts payable, we circularized the various creditors of any substance; that is, amounts in excess of two or three hundred dollars. We also circularized any large suppliers, even though there appeared to be nothing due them, and on receipt of the replies we checked them with the amounts appearing to be due on the companies' books. Where there were differences we inquired and made adjustments. We examined the various voucher registers or other records that the companies may have had to see whether any bills were entered subsequent to our period; that is, in May, June, and July of 1941, applicable to the 12 months ending April 30, 1941. Where we discovered those, they were entered.

In one case we found \$14,000 worth of bills which were entered in a subsequent period. But we also found that there was ten or eleven thousand dollars worth of bills entered after April 30, 1940, which was applicable to the prior year; so we removed the \$10,000 worth of expenses from the current year and increased the expenses by \$14,000 for bills which were entered subsequent to the current year.

We checked vendors' statements against the open accounts payable. A similar examination was made of wages payable. We examined the pay roll accounts to determine the liability,

the accrued liability as of April 30, 1941, and also April 30,  
928 1941. The distinction between the two accounts is that the company might have a full week due towards the end of the month, which might be April 29th, and not pay the same

until May 2d. Then, in addition to that, they will have an accrual for two days between the last pay roll date and April 30th.

With respect to the taxes, we determined the accrual based on the tax returns filed by the company at the close of the year. As I will explain later, we determined the tax liability for the four months from January 1st to April 30, 1941, and set up the liabilities for the period. We also set up the tax liability for any items that went into surplus accounts which would not appear through the profit and loss account.

Equipment obligations were circularized and confirmed. I have reviewed the methods of handling the reserves for depreciation of revenue equipment and other assets when I discussed the asset account.

Now, with respect to the reserve for uncollectible revenue, the contract provides that the company shall maintain a reserve of one-sixth of one percent of its revenue for the year as a reserve. We made an adjustment, giving effect to that provision, and in so doing, we followed the policy of charging the expense account any accounts that were bad where the shipments arose subsequent to May 1, 1939. Where shipments arose prior to May 1, 1939, we charged the bad debt to the surplus account, and that procedure was necessitated by the fact that the companies were not too cautious or accurate in the way they wrote off their bad debts. In some cases they felt the amount was collectible and continued to keep the same on its books, and when we examined the same we found the account was more than two years old, and we determined it was bad and therefore we wrote it off.

In connection with insurance reserves, particularly where the companies carried self-insurance, we examined the claims if they were for cargo. If they were for P. I. and P. D., we had an insurance expert examine the claims filed, to satisfy ourselves that the reserves were adequate. In addition to that, and to assure ourselves that the liabilities would be set up where the reserve was inadequate, a contingent reserve was set up on the books of each company.

Q. One more thing in that connection: Did you also make tests against the four or five years of past experience of the company to see how the total of the reserves lined up with their expense?

A: Yes.

Q. You also confirmed your reduction by writing and getting an answer from the insurance company; did you?

A. Oh, yes.

Q. Did you also write letters to lawyers of the various companies, asking whether or not they had any knowledge of any claims outstanding or lawsuits or threatened litigation?

A. Indeed we did.

Q. And you received replies which you took into account?

A. Yes, sir.

Q. One way or the other?

A. Yes, sir. That about covers the liability section. The remaining item that gave us some difficulty was deducting the profit of the companies who were on a period basis, and where the month did not end or begin on April 30th—that is, on May 1st and April 30th—we made an effort to determine the correct profit for the period, and then determined the number of days applicable to the current period and made an allocation on that basis. I suppose I could go on almost indefinitely, but that about sums up the work that we have done at the respective companies.

Mr. SULLIVAN. I suppose we might suspend at this point, Your Honor, before we start and get half way on a new topic.

Exam. BAKER. I think that would be the thing to do, but before we adjourn for lunch I would like to get a little better idea as to how long this hearing is going to last. Apparently the applicant has revised its plan somewhat as to the number of witnesses. Can you give me an estimate as to the time it is going to take to put your case on?

931 Mr. SULLIVAN. This afternoon we are moving into the financial costs that have been produced as a result of these studies that Mr. Reicher has described. I do not know how long the examination will be on that, maybe a half an hour or so, approximately, and at least, for the moment, I think we will be through with Mr. Reicher except for the cross-examination. We have, following Mr. Reicher, probably two or three additional witnesses along the same subject as were touched on by Mr. Howell this morning, with supporting exhibits. As to how long it will take, I do not know. Maybe you can multiply that by the length of time Mr. Howell took this morning. It depends partly upon the cross-examination. I would think that those witnesses would require approximately a half day; so that while we expect to call Mr. Seymour back to the stand for some brief testimony, perhaps I would want to put Mr. Reicher back on the stand tomorrow for a few things, after we have had a chance to think it over tonight. I think some time about tomorrow noon we ought to be finished.

Exam. BAKER. Can any of the intervenors state as to the time they will occupy as to the presentation of their evidence?

Mr. Wiprud?

Mr. WIPRUD. Perhaps some of the other intervenors can state their position as to the time that might be consumed by them.

932 Mr. MILLER. I have approximately seven or eight witnesses. There is no chance of putting them on today or to-

morrow; so I would like to be advised, so that I can arrange to have them here on Monday.

Mr. SULLIVAN. Are they here now? I will agree to your putting them on this afternoon.

Mr. MILLER. They are not all here at the present time, and I am not in a position to put them on this afternoon.

Exam. BAKER. How long do you estimate your direct examination will take?

Mr. MILLER. I imagine not over 10 or 15 minutes, but I imagine there will be at least an hour on cross-examination of each.

Exam. BAKER. Do you any of the other intervenors propose to put on any evidence?

Mr. O'Brien?

Mr. O'BRIEN. Mr. Examiner, I imagine probably an hour or an hour and a half.

Exam. BAKER. Mr. Wiprud, can you give us your estimate now?

Mr. WIPRUD. We have a number of witnesses, Mr. Examiner, and we have anticipated that they will consume about five hours on direct testimony. That is predicated upon the testimony that has been presented here, and which we have understood had  
933 been concluded, in regard to the all important issue of competition. We were advised yesterday, for the first time, that the applicant would assume their proper burden of proof and present an entirely new story of competition. Under the circumstances how much time it will take is dependent wholly upon the extent of their presentation, which we were given to understand would be quite extensive.

Exam. BAKER. Do you feel that five hours is probably the maximum that will be required, and that may be decreased, depending upon the evidence produced by the applicant, or increased?

Mr. WIPRUD. Well, I think, Mr. Examiner, it might not be inappropriate at this time for me, to present to the Commission, through you, a statement of the position of the Anti-Trust Division in this proceeding.

The Antitrust Division was impelled to intervene in this proceeding because of numerous complaints received from persons in public and private life. Assistant Attorney General Thurman Arnold, in his letter to the chairman of the Commission, which constituted the Division's petition for intervention, stated the purpose and scope of such intervention. What has transpired thus far in this hearing amply justifies the statement made in his letter, namely, that insofar as the public interest is concerned, applicant parties might not, because of their property interests, be  
934 relied upon to present facts sufficiently comprehensive and unbiased to enable the Commission to make the statutory finding. That is, a statutory finding in regard to

competition. This would likewise be true in regard to intervenors or protestants, who are governed largely by their property interests. This statement that I have just made is based upon the showing which applicant originally made with regard to the vital issue of competition in this particular proceeding. The showing made at the initial hearing in this case is identical with that made in the former case. The Antitrust Division demonstrated that such evidence as had been submitted has no probative value; in fact, it was entirely misleading and would afford no basis upon which the Commission could make any determination. Applicant is now presenting an entirely new picture of the competitive situation, which is, in our view, as it should be, because the burden of proof is clearly on the applicant to show that the proposed transaction would not unduly restrain competition.

Now, Mr. Examiner, it is clear that the Antitrust Division is not an intervenor in this proceeding in the usual sense. It is a Government agency charged with the duty of enforcing the antitrust laws. The antitrust laws are applicable to transportation and there is nothing in the Interstate Commerce Act to the contrary. It is true that in merger proceedings the order of the

Commission based upon the statutory finding exempts the  
935 transaction and the parties thereto from the antitrust laws, but it cannot be seriously urged that such order of the Commission could approve a transaction which would unduly restrain competition. Therefore, the Antitrust Division conceives it to be its duty to prepare and bring facts to the Commission on the basic issue of competition, and related issues in order that that record may be crystal clear to the end that the public interest may be protected.

The time which has been allotted to the Division to prepare and bring facts and information from the standpoint of the public interest has been too short. The Division asked for 30 days and the Examiner granted 14 days. During those 14 days the staff that could be assigned thereto has been working night and day to prepare and present factual evidence to the Commission bearing on the vital issue in the case. That preparation has not yet been completed. The original request for 30 days is the minimum time within which a satisfactory presentation on behalf of the public can be completed. In this connection, it should be borne in mind that applicant has had almost two years to prepare its evidence because all of the data in the former case, including graphs, traffic studies, et cetera, were purchased by the new company from the old. Certainly, the Antitrust Division should have 30 days in which to complete its preparation of factual data for this record.

Any suggestion that the Antitrust Division is guilty of laches by virtue of the fact that it has had notice of this application since its inception is not well founded. The Commission will take judicial notice of the fact that until recently the Antitrust Division has been understaffed and not until approximately July 1st of this year were funds available for an expansion of its personnel. Up until that time only two men were assigned to transportation matters and their time was taken up entirely with pending transportation cases, as well as the defense of orders of this Commission before the courts. After Congress has appropriated funds, there became available during August, of this year, other men who were assigned to the transportation unit. Mr. David Macdonald and myself are in charge of this matter. We came to the Division only this past month and, therefore, for the first time the Antitrust Division was able to translate into action its interest in these merger proceedings.

I want to include in the record, Mr. Examiner, that statement of the position of the Division as a basis for a motion that I desire to make that we be given the original time that we requested for the purpose of completing our presentation of factual data to the Commission.

EXAM. BAKER. Has the applicant anything to say in that respect?

Mr. SULLIVAN. I would suggest, Mr. Examiner, first, that the statement contained in the statement read by Mr. Wiprud is slightly without proof here in the record. He stated that the applicant purchased the records of the Transport Company, and that therefore the applicant has had two years in which to prepare itself on the subject of competition, or otherwise, with respect to this matter. I submit to you, Mr. Examiner, that there is no proof in the record that shows that we got any exhibit covering the question of competition. We had no records prepared and we purchased no records or graphs or charts because there were not any on the subject of competition in the Transport case. The only thing that was available was such stuff as some of us who handled the Transport case had in our possession as a result of dealing with our own companies at that time, and which we ourselves prepared last year for similar purposes.

In respect to the delay, it has not been suggested here, first, as to what could be accomplished by the delay. Certainly the application was in the hands of the Justice Department some time before this hearing commenced. Nothing materially new or additional has been brought out. If the duty of the Department, as was sug-

gested by counsel, Mr. Wiprud, here, is to develop before the Commission all the facts pertaining to monopoly or competition, or lack of competition—if that is their function, if that is their duty, the very day they heard of this hearing they could have started work on that. That did not require hearing testimony in this case,

938 in order to determine it, as it would be the duty of a public official to determine the facts they are, regardless of one side or the other. The Commission's files are here. We are not in Washington; we have to send people here to get at these files to determine these things. Aside from that, the files are always before the Interstate Commerce Commission. Such information is available, and certainly is better known to the Interstate Commerce Commission than to anybody else, because they have to determine that. The Interstate Commerce Commission's files show all of the information with respect to these companies. I don't know who should know more about this proceeding than the Interstate Commerce Commission, who is charged with determining this.

However, aside from that, as I say, the task, according to the conception of the duty of the Justice Department, as stated by Mr. Wiprud here, is to produce the facts, whatever they are. Nothing with respect to our testimony changes the facts. They could then prepare that list of every bit of competition there was in the territory. They are here in Washington. They did not need lawyers to check that. In fact, I do not think they had to use lawyers to check up whatever they have done on that subject. They could have been ready to present it, as I say, to the Commission at any time or supplement whatever we have presented. I think that  
939 that is all I have to say on the subject. I do not believe any delay is necessary. It certainly would be a hardship on the applicant—

Examiner BAKER. I will reserve—

Mr. SULLIVAN. If it be granted.

Exam. BAKER. I will reserve ruling until after lunch. I was going to ask counsel whether it would be agreeable to have a night session. Would it be agreeable to everyone that we have a night session tonight?

Mr. SULLIVAN. It will be agreeable to us.

Exam. BAKER. I will not make a definite decision on that now. It begins to look as though we could not finish this case tomorrow, even if we did have a night session. I will also make a decision on that after lunch. We will now adjourn until 2:15.

(Whereupon, at 1:10 o'clock p. m., a recess was taken until 2:15 o'clock p. m. of the same day.)

Exam. BAKER. Are you ready, Mr. Sullivan,

Mr. SULLIVAN. Yes, sir.

Exam. BAKER. Come to order, please. Mr. Wiprud, I have given consideration to your motion for another adjournment in this proceeding. I realize that you do not represent an ordinary intervenor, and it was largely in consideration of that fact that I granted the previous adjournment. However, the Examiner has a duty to the applicant, as well as to the intervenors. This applicant has filed an application requesting certain authority, and is entitled to a decision on that applicant within a reasonable time. As you know, delayed justice is frequently equivalent to a denial of justice. Also, as you pointed out, the burden is on the applicant to establish and to satisfy the Commission that the proposed transaction will not result in an undue restraint of competition. If, as contended by you, the evidence does not establish that, presumably the application will be denied. If the applicant is willing to rest its case on the evidence presented, and to be presented, it, of course, does so on its own responsibility.

Considering all the circumstances, including the facts referred to when I previously ruled on your motion, I am constrained to deny your motion for further adjournment.

Mr. WIPRUD. May I respectfully except to the Examiner's ruling?

Exam. BAKER. You may. You may recall Mr. Reicher, Mr. Sullivan.

Mr. SULLIVAN. Yes; Mr. Reicher; and while he is coming to the stand, Mr. Examiner, I would like first to have marked for identification a letter in conjunction with Exhibits 7, 8, and 9 that were put in this morning in the Arrow Transport Company transaction. I have had handed to me this letter, which was photostated for one of the other people around here. It was not given to me early this morning, and it would complete that correspondence and the rest of the documents on the agreement and contract between Arrow and the Transport Company; so I will ask to have it marked for identification.

Exam. BAKER. Do you have another copy of that?

Mr. SULLIVAN. I have copies for everybody.

Exam. BAKER. The document referred to, which is a letter dated March 7, 1941, addressed to the Transport Company, will be marked for identification as "Applicant's Exhibit No. 11."

(Exhibit No. 11, Witness Reicher, marked for identification.)

Mr. MILLER. Mr. Examiner, may I inquire at this time as to whether or not the applicants are in a better position to state approximately what time they will complete their case, so that I can have my witnesses available? Some of them are out of town, and I will have to wire them.

942 Mr. SULLIVAN. I would say that we will suspend our case at any time and have him put in his case any time he wants to, so he can have them available.

Mr. MILLER. I appreciate your consideration, but I will not be prepared to present those witnesses until you have completed your case, because what you put in the record will determine to some extent what my witnesses will present.

Exam. BAKER. Mr. Miller, Mr. Sullivan described, I believe, to the best of his ability how long this proceeding will take. He estimated a day and a half, if we hold a night session, and he would probably complete his case either tonight or early morning. Is that correct?

Mr. SULLIVAN. Some time tomorrow morning, sir.

Exam. BAKER. I believe you could count on having your witnesses present and they would be able to testify tomorrow, but, of course, I can make no commitment on that.

Mr. MILLER. That was the information I desired.

Mr. SULLIVAN. Mr. Examiner, I offer in evidence this exhibit which we have just had marked for identification.

Exam. BAKER. Is there any objection?

Mr. WIPRUD. We have not seen it yet.

Exam. BAKER. Is there any objection to the receipt of Applicant's Exhibit No. 11, in evidence?

Mr. WIPRUD. No objection.

943 Exam. BAKER. The document will be received in evidence.

(Exhibit No. 11 was received in evidence.)

Mr. LACEY. May I ask whether this plan contemplates a Saturday afternoon session, or is that too far in the future to determine?

Exam. BAKER. Well, the Examiner is prepared to go into the afternoon to accommodate any witnesses that may be present and who may not desire to come back next week. If those witnesses are here and he is ready to put them on tomorrow morning, I am inclined to let him go right ahead. However, I do not want to state definitely. It depends upon the progress of applicant's case.

Mr. SULLIVAN. Shall we proceed?

Exam. BAKER. Yes.

HARRY J. REICHER resumed the stand and testified further as follows:

Direct examination (continued) by Mr. SULLIVAN:

Q. Mr. Reicher, at the conclusion of the morning's session, I believe you had finished outlining the procedure which you followed in making these orders. Now, as a result of your audit, have you prepared certain schedules showing the results, from various aspects of the matter, of those orders?

A. I did, sir.

Mr. SULLIVAN. At this time, Mr. Examiner, I would like 944 to have marked for identification a document entitled "Statement and Schedules in Re Application of Associated Transport, Inc."

Exam. BAKER. The document described will be marked for identification as "Applicant's Exhibit No. 12."

(Exhibit No. 12, witness Reicher, marked for identification.)

Mr. SULLIVAN. Mr. Examiner, we have one schedule which is not included in this volume now marked "Exhibit 12," and which we were unable to have photostated in time to have here. We have, however, five typewritten copies; we have sufficient copies so that the intervenors can follow what we are doing with respect to it, and then we will supply them tomorrow morning with photostatic copies of it. It is agreeable to them, and I wonder if we may use it and have it marked for identification at this time?

Exam. BAKER. You may, if that is agreeable to the intervenors. The document entitled "Comparison of the Net Worths of the Companies included in I. C. C. application," et cetera, will be marked for identification as "Applicant's Exhibit No. 13."

(Exhibit No. 13, witness Reicher, marked for identification.)

By Mr. SULLIVAN:

Q. Now, Mr. Reicher, we will take up this Applicant's 945 Exhibit No. 12, and will you describe to us, starting at the page of that document numbered 1, starting there, and describe to us what these various schedules were and the sources from which they are prepared.

Exam. BAKER. I suggest that in explaining the exhibit you merely explain any matters that are not self-explanatory, Mr. Reicher.

Mr. SULLIVAN. I thought we would touch on those as we went along. I am glad you made the suggestion, Mr. Examiner.

The WITNESS. I am terribly sorry; I didn't hear that.

Exam. BAKER. I stated that in explaining the exhibit I would suggest that you refrain from explaining any matter that is sufficiently self-explanatory.

The WITNESS. Yes, sir. The first five pages of this exhibit—

By Mr. SULLIVAN:

Q. By that, you refer to Exhibit 12?

A. Yes.

Q. And when you say "the first five pages," you mean pages numbered 1 to 5?

A. Yes.

Q. When you refer to a page, the number you refer to is the number which is in this bound volume.

A. Yes, sir.

Q. All right. Now, go ahead.

A. The first pages of Exhibit 5 are a consolidated balance sheet of both the carrier and noncarrier companies, as 946. adjusted at April 30, 1941. It shows the financial condition of each of the companies as suggested on April 30, 1941, and concludes with the total for the carrier companies and another total for the noncarrier companies, and eliminates intercompany assets and liabilities or investments which one company may have in another company, in order to finally produce the consolidated net worth of all the companies.

The noncarrier companies are reflected in one column, and supported by a separate balance sheet contained on pages 3 and 4 of this exhibit. This balance sheet shows the consolidated net worth of these companies at April 30, 1941, to be \$1,900,243.24.

Mr. LACEY. Will you repeat that figure, please?

The WITNESS. \$1,900,243.24.

By Mr. SULLIVAN:

Q. And that figure that you just read appears on page 2, on the extreme right-hand column, the figure next to the bottom.

A. Yes, sir. Pages 6, 7, and 8 of this Exhibit 12 shows the adjusted profit and the profit per books for each company for the year ending April 30, 1941. It also gives effect to nonrecurring expenses, reduced by State and federal income taxes. Page 6 of this schedule—

Q. Excuse me. These nonrecurring expenses to which you refer, are they nonrecurring expenses specifically set forth 947 in the contracts between the Associated Transport Company and various companies where such items appear?

A. Yes, sir. In connection with that, we have made an examination, or at least in the course of our examination we verified these

nonrecurring expenses, to be sure that they were included in the original expenses as reflected on the companies' books. Page 6 of this schedule shows the total operations for the carrier companies, as adjusted and as per books. Page 7 shows the operations of the noncarrier companies. Page 8 is a summary of both the carrier and noncarrier companies, showing the differences in the total expenses of the combined companies.

It will be observed that the profit as reflected by the companies' books was \$1,403,415.50, which we have reduced in our audit to \$1,266,155.13. We have added to that the nonrecurring expenses of \$192,103.68, reduced by taxes of \$74,350.19, making the adjusted net profit, that is, giving effect to the nonrecurring expenses, \$1,383,908.62.

Q. And that last figure which you gave us as the adjusted net profit of the companies is less than the net profit of the companies on the books by around \$20,000.

A. By \$19,506.88.

Q. Yes.

948 A. Page 9 of this Exhibit 12 shows a comparison of the consolidated operation of these companies; that is, of the carrier companies, for the years 1939, 1940, per books, as adjusted for the 12 months ending April 30, 1941, and as estimated for the year 1941. It further shows the operations as per the companies' books for the four months from January 1 to April 30, 1940, and the same period for 1941. It further makes a comparison of the operations for the eight months May 1st to December 31, 1940, and 1941. Pages 10 and 11 of this Exhibit 12 are pro forma balance sheets as of June 30, 1941, giving effect to the adjusted assets and liabilities of the companies at April 30, 1941.

The conditions of the companies as of April 30, 1941, as reflected by their books, is shown on separate columns in this statement. It shows the total carrier companies, and in addition the individual noncarrier companies, and shows the total noncarrier companies. It then shows the total of the merging companies before adjustments. Our adjustments resulted in decreasing the assets by \$80,929.61, which resulted in adjusted assets of \$9,379,466.38. This is not capital; it is just assets. We have indicated the condition of the Associated Transport as of June 30, 1941. We have given effect to the finance application with respect to the \$1,500,000 for working capital, and finally arrived at the pro forma balance sheet showing total assets of \$10,950,946.38.

949 Q. May I ask you a question at that point, Mr. Reicher?

A. Yes, sir.

Q. You say you have given effect to a consummation of the transaction involving the raising of \$1,500,000 of new working capital.

A. Yes;

Q. But I observe, under cash at the extreme righthand side of the page, you have a figure of \$1,410,000 in place of \$1,500,000.

A. Yes, sir.

Q. Will you explain that.

A. The \$1,500,000 was reduced by an estimate of \$90,000 for expenses in connection with the sale of the securities and expenses in connection with this organization or merger.

Q. Of course, any expenses in regard to the sale of securities could only be determined when, as, and if an underwriting agreement was reached, and that, under the arrangement, would be filed with the Commission for such action as they chose, before it was entered into.

A. That is correct.

Q. Furthermore, under the laws of Delaware, under which—

Mr. WIPRUD. Just a moment. Is the attorney testifying now?

Mr. SULLIVAN. Well, if I didn't do it that way it would waste just so much time.

950 Mr. WIPRUD. We object to it as a leading question.

Exam. BAKER. In view of the objection, please reframe your question.

By Mr. SULLIVAN:

Q. What do the laws of Delaware provide with respect to Delaware corporations as to the sale of their stock, at par or otherwise?

A. I presume the sale must be at par.

Q. Have you, in using this figure here, intended to indicate that any stock is intended to be sold at a discount?

A. No.

Q. The figure does not so indicate, does it?

A. No, sir.

Q. You have given—is this the net figure?

A. I have merely estimated—I knew that some expenses would be incurred in connection with this merger, and I have tried to estimate the cost of those expenses and deducted it from the cash, because you had to pay it out at cash. It does not mean that the \$1,500,000 is reduced to \$1,410,000. I have a column here giving the effect of the transaction, and this is the net figure for that work.

Q. Will you continue, please.

A. Yes, sir. Page 11 shows the liability section of the pro forma balance sheet, in connection with which we discussed  
951 the assets a moment ago. Attention is directed to the giving effect to transactions, which are the last three columns of this page.

In the third next-to-the-last column you will find that we have eliminated the companies' present capital, all of the companies, amounting to \$1,403,000, and we have also eliminated their surplus,

and then especially have entered the preferred stock of \$5,294,200 and the common stock of \$6,444,449, both of which are to be paid for the acquisition of these companies. I am sorry. That is incorrect.

Q. Yes.

A. The \$5,294,200 represents the payment for the acquisition of the companies, plus the \$1,500,000 for the new working capital. This results in a total capital of \$5,938,649, which is \$472,872.24 less than the companies' present capital, and consequently produces a capital surplus of \$472,872.24. Page 12 of this exhibit shows a summary of the disposition of the proposed issue of preferred and common stock. It shows the amount of stock to be paid to each company, and the two columns, one per schedule and one per contract, merely give effect to the elimination of the amount of dollars less than fifty or more than fifty, for the purpose of adding or reducing one share of stock.

In other words, in the case of Consolidated Motor Lines, they are to get \$587,226.58 in preferred stock. Under the agreement, they get an even \$587,200, and so on down to the 952 total where we get a total of \$3,904,930.22, representing the net worth of the various companies, and for which they will get \$3,904,900 in preferred stock. \$110,700 of this preferred stock will be reacquired by Associated Transport through Barnwell Warehouse & Brokerage Company.

Q. Do you mean through the purchase or acquisition?

A. Through the acquisition of Barnwell Warehouse & Brokerage Company. This is because Barnwell Warehouse & Brokerage Company owns approximately 30 percent of Barnwell Brothers. Consequently, Barnwell Warehouse will receive that much stock of Barnwell Brothers. Since Associated is acquiring Barnwell Warehouse, it must pay the stockholders of Barnwell Warehouse this additional stock of \$110,700. In effect, it amounts to two issues of stock, in the amount of \$110,700, one of which will be reacquired through the ownership of Barnwell Warehouse & Brokerage Company.

Q. And then it is contemplated or understood that that stock, upon the reacquisition, will be canceled.

A. Yes, sir. Now, with respect to the common stock, the schedule herein shows the amount of stock to which the various stockholders of the companies have subscribed at \$1 per share. The next column shows the acquisition price or the amount of common stock which will be paid to the stockholders of these various 953 companies, and the last column shows the total amount of stock to be paid.

On page 13 you will find a repetition of the Barnwell Warehouse situation. Barnwell Warehouse will receive 15,472 shares

because of its ownership of Barnwell Brothers stock. Consequently, \$15,472, or shares, have been reduced from the total of 679,883.

Q. Then the stock will be canceled upon reacquisition.

A. Correct. In addition to that, we have the subscription of Mr. Seymour in the purchase from the Transport Company of its records for 9,000 shares of stock, making a total of 704,651 shares of common stock to be issued, or a total capitalization of \$5,998,851. After that, and as previously reflected in the pro forma balance sheet, the company will receive net assets over and above liabilities of \$6,471,723.24.

Q. By "the company" you mean the Associated Transport?

A. Yes.

Q. The applicant.

A. Yes.

Q. Go ahead.

A. Leaving the company with a capital surplus of \$472,872.24. Page 14 is another pro forma balance sheet of Associated Transport, showing the condition of this company as it will appear after acquisition of the various companies, and, again, it shows the capitalization of \$5,998,851, and an unearned surplus of \$472,872.24.

Exam. BAKER. Mr. Reicher, this latter balance sheet gives effect to the acquisition of control, whereas the previous one gives effect to the merger; is that correct?

The WITNESS. That is correct. Page 15 of this exhibit is a pro forma statement of the income, profit, and loss, based on the estimated operations for the eight months, May 1 to December 31, 1941. It shows the operations of the carrier companies and the noncarrier companies, and the total estimated operation for the year. Incidentally, the first four months of 1941 are the operations as reflected by the carriers' books.

By Mr. SULLIVAN:

Q. May I interrupt you, please, Mr. Reicher, to ask you, when you use the word "estimated," what basis did you use for the estimate?

A. Well, in each company we had to use a different form or different formula for estimating the operations. We consulted with the respective heads of the companies, the officers of the companies, and determined from them what they believed the revenue would be for the ensuing eight months, and we watched to see that the expenses were consistent with that increase in revenue. That is about all.

Q. Other than consulting with them, did you take into consideration the increase or decrease in revenue during the

955 first four months of 1941, as opposed to the first four months of 1940?

A. Oh, indeed.

Q. And you used that as a guide?

A. Yes, sir.

Q. Did you also use the revenue for other years at given periods, like the fall months, and so forth?

A. Yes.

Q. As a guide?

A. Yes, sir.

Q. To find out whether they have seasonal fluctuations?

A. That is correct. Having arrived at an estimate of operations for the year, we eliminated the nonrecurring expenses, added the proposed economies as outlined at this hearing, and reduced those economies of \$1,600,000 by \$800,000, representing estimated taxes, and finally arrived at an estimated profit for the year 1941 of \$2,878,000.

Q. All through here you have eliminated taxes, as you said. I mean in each of these—

A. We have not eliminated taxes. We considered taxes.

Q. You considered taxes?

A. Yes.

Q. You have taken the taxes out?

A. We deducted taxes from profits; yes.

956 Q. What did you use as the basis of your calculations as to what the taxes would be?

A. On the proposed economies?

Q. Yes.

A. We were not able to use any specific guide because of the nature of the various taxes, and we used 50 percent, because we calculated that these proposed economies would effect profits on top of earned profits, which would bring the profits in the higher income and excess profits taxes brackets; so we arbitrarily took 50 percent off, and thought we were safe.

Exam. BAKER. So far as the provision for income taxes is concerned, prior to that \$800,000 in the third column—

The WITNESS. Yes.

Exam. BAKER. \$968,668—what basis was that computed on?

The WITNESS. We computed the taxes on the profit reflected by each company.

Exam. BAKER. What rates did you use?

The WITNESS. The 1940 income tax rates. Schedule No. 16 of this exhibit shows the basis for distributing the preferred and common stock to each of the companies or their shareholders. This statement starts with the net worth, as adjusted at April 30, 1941,

for each of the companies. Columns 2 and 3 show depreciation adjustments for schedule 3 (e), and it shows the depreciation adjustments pursuant to the contract. That is paragraph 3 (e) of the contract reduced by 24 percent taxes, and just to explain that, under the contract, any adjustments made in depreciation which resulted in increasing the revenue equipment was to be paid for—I wish to modify that, if you don't mind—under the contract any increase in the revenue equipment as a result of the depreciation adjustments in 3 (e) of the contract—

By Mr. SULLIVAN:

Q. Would you state what that is at this point?

A. Perhaps I had better finish this.

Q. All right. Go ahead.

A. Under 3 (e) of the contract it had to be deducted from the net worth in considering the distribution of preferred stock. Instead of preferred stock, to the extent of the depreciation adjustment common stock was to be distributed. Schedule 3 (e) of the contract give the rates of depreciation that we were to apply in computing book values and the depreciation expense of the companies' equipment. It treats with revenue equipment, furniture and fixtures, shop and garage equipment, leasehold improvements, buildings, other structures, et cetera.

Q. Mr. Reicher, I would like now, at this time, to take a truck for whatever value you choose, and assuming that it has been on the company's books for four or five years, and that the depreciation rates charged by the company during those four or five years had varied, and then tell us what would happen and what the result would be.

The WITNESS. Will you read that question?

(Question read.)

Mr. SULLIVAN. I am asking him to give an example of what he has been talking about here.

A. Assume that a truck which originally cost \$3,000 was depreciated by the company, so that at April 30, 1941, its book value was \$1,500. When we made our adjustments, we changed the book value of that truck by virtue of reducing the depreciation, and therefore arrived at a book value of \$2,000. The difference of \$500 naturally increased the surplus of the company and therefore the net worth of the company. In determining the amount of preferred and common shares to be distributed to the respective companies, we eliminated this \$500 from the companies' surplus in determining the amount of preferred stock and gave the company instead 80 percent of \$500 of common stock.

EXAM. BAKER. Is that correct, Mr. Reicher? Is it not—  
The WITNESS. It is 80 percent.

EXAM. BAKER. Five percent of 80 percent.

By Mr. SULLIVAN:

Q. Five percent of 80 percent.

A. Yes. It is 4 percent, really. We went one step further, though. Taking the first company, which is Consolidated Motor Lines, they show a net worth of \$742,286.96, after we have reduced their depreciation by \$10,860.19. When we reduced 959 their depreciation by \$10,860.19, we determined the tax thereon was \$2,606.45. Consequently, instead of \$10,860.19 being the increase in the company's net worth, as a result of this depreciation adjustment, the correct figure is really \$10,860.19 reduced by the tax of \$2,606.45. So that, in effect, we reduced the \$742,286.96 of net worth by the difference between \$10,860.19 and \$2,606.45, or \$8,253.75. We took 80 percent of that difference, of \$734,033.22 and distributed preferred stock for that. Now, for the \$8,253.75, being the difference between the depreciation and the tax, we distributed common stock, as you will find in column 17, which is, as indicated, 4 percent of column 2, minus column 3.

Now, to proceed, based on that calculation, Consolidated Motor Lines is to receive \$587,226.58 of preferred stock. The computation for common stock is as follows: We determined the profit—at least, column 7 shows the profit before tax of \$401,816.51, and then the net profit after tax of \$238,809.49.

Column 9 shows the schedule I adjustment for the schedule I in the contract, and refers to the nonrecurring expenses. In the case of Consolidated Motor Lines, these adjustments amount to \$57,347.16. The tax on those adjustments was \$25,003.36. Therefore, adding column 8, which is the company's net income after tax, and column 10, which is the nonrecurring expense after tax, produces the company's adjusted net income in column 11 of \$263,812.85.

960 Again, pursuant to the terms of the contract, the formula was to deduct 6 percent of the preferred stock from the adjusted profit to produce the net income available for common stock, and in this case it was \$228,579.25.

Q. The reason for deducting 6 percent of the preferred stock was what?

A. The reason for deducting 6 percent of the preferred stock was to make provision for the dividends on preferred stock.

Q. All right.

A. Column 14 conforms to the formula contained in the contract, which provides that one share of common is to be paid for

every \$2 of adjusted net earnings, which, in this case, produced 114,290 shares.

Column 17 shows the number of common shares which Consolidated received for its depreciation adjustment, and adding those two together produces the total column shares of 114,620. Adding that to the subscription shares of 6,452 produces a total common stock which Consolidated receives or 121,072 shares.

Column 21 shows the percentage of common stock to the total, which, in the case of Consolidated, is 17.18 percent.

Page 17 just refers to some of the adjustments that were made in the previous schedule, and I believe is self-explanatory.

Page 18 of this exhibit shows the number of vehicles 961 owned by these companies at April 30, 1940, and April 30, 1941. It was prepared for the purpose of showing book values of the equipment reflected in the companies' balance sheets.

Again, to illustrate the point, Consolidated Motor Lines owned 339 power units and 339 trailers. The average cost of their trucks was \$1,400, their tractors \$3,011, their trailers \$1,223. The book values, however, as reflected by the balance sheet in this exhibit, shows that the trucks were on their books, and that is adjusted after contract depreciation adjustments, at \$250.56 for trucks, the average book value for tractors of \$1,264, and for trailers, \$866, and that may be compared with McCarthy, \$303 for trucks, \$1,354 for tractors, and \$858 for trailers, and in the case of Moran, \$53.61 for trucks, \$896 for tractors, and \$709 for trailers.

It will be noted that all of the carrier companies involved in this application at April 30, 1941, owned 1,648 power units and 1,493 trailers, and that at April 30, 1940, they owned 1,468 power units and 1,273 trailers.

Page 19 of the exhibit was prepared to show the average profit which these companies have earned on their trades and sales of vehicles.

Again, in the case of Consolidated, their average profit per vehicle was \$275.56, and the average book value at the time the vehicle was traded was \$192.

That seems to compare favorably with all of the other 962 companies.

Q. Incidentally, by virtue of your audit adjustments, the profit they made on those in nearly every case was cut down as an average proposition, was it not?

A. That is correct. Page 20 of the exhibit is a bit of historical information, which shows the growth of these companies from 1932 to April 30, 1941, and is estimated for the year 1941. It also shows a comparison of the operations of these companies

for the first four months in 1940 as compared with the first four months in 1941.

On page 21 we have a total of the operations of these companies, showing revenue, depreciation, net income before and after taxes, and in the aggregate it shows that the revenue of these companies, excluding Southeastern and Transportation, which were not in business then, was \$3,443,000 in 1932, gradually increasing to \$20,559,000 for 1941; that is, as adjusted and as estimated, \$24,275,000 for the year 1941. Page 22 of this exhibit is just a schedule of employees of the companies as of April 30, 1941.

Q. Excuse me a minute. In reference to page 22 of the schedule of employees, that is the total number of employees, including extras?

A. Yes; those are all the employees the companies employed for the last week of April 1941.

953 P. Pages 23 and 24 are a consolidated balance sheet of the Consolidated Motor Lines. It is submitted merely to substantiate the figures already appearing in the consolidated statement of all of the companies included in this application.

Page 25 is also a statement of income, profit, and loss, with respect to companies comprising the Consolidated Motor Lines, and is included in total in the consolidated statement of all the companies.

Page 26 is a schedule showing the amount of current liabilities of the companies attributable to their fixed investments at April 30, 1941. This statement shows that the companies had an investment in equipment at April 30, 1941, represented by the book values of that equipment, in the amount of \$6,671,123.72. It had prepayment, such as licenses, insurance, terminal, working funds, and other prepaid items, of \$480,058.50. The total fixed investments, therefore, were \$7,151,182.22. We have deducted long term obligations; that is, obligations which do not mature for a year or more, of \$710,000, and have arrived at the net fixed investment of \$6,441,034.06. The companies' capital and surplus in the aggregate amounts to \$4,962,596.75, showing that these companies have used current liabilities of \$1,478,437.31 for the acquisition of fixed investments.

Q. Do you mean they used current liabilities?

A. Yes.

964 Q. Or they acquired current liabilities?

A. They used current liabilities for the acquisition of this property. Page 27 is a statement prepared for the purpose of showing the cash requirements of these companies as of April 30, 1941. It shows that the companies would require cash for notes

payable of \$290,219.17, and other current obligations, totaling \$3,579,610.78. For the purpose of meeting these obligations in the event of stoppage for any cause, it could only resort to the following assets: Cash, \$510,411.15; investments, \$10,034.25; accounts receivable, \$1,404,523.62; other investments, \$176,204.35, making total available cash or its equivalent, \$2,101,173.47, showing that the company has excess current liabilities over its available cash of \$1,478,437.31.

Q. Where you used cash, you mean accounts receivable, and so forth?

A. Cash or its equivalent, I mean.

Q. These last two pages, Mr. Reicher, pages 25 and 27, in addition to supporting other data appearing in these schedules, are specifically directed to the question of working capital; is that true?

A. Yes, sir.

Q. Now, you have another exhibit marked for identification there, No. 13.

965 A. Yes, sir.

Exam. BAKER. We will take a short recess at this point.

(There was a short recess taken.)

Exam. BAKER. Come to order, please. With respect to the contemplated night session, in view of the unavailability of certain witnesses, it seems preferable not to have a night session tonight. It will be expected applicant will complete his case some time tomorrow.

Mr. SULLIVAN. That is right.

Exam. BAKER. Very well. You may proceed.

By Mr. SULLIVAN:

Q. Mr. Reicher, when we suspended we were dealing, or about to deal, with Exhibit 13 for the applicant, for identification. Will you describe that exhibit for us, please?

A. This exhibit No. 13 shows the net worths of the respective companies at April 30, 1941; shows the total increase or decrease in the companies' profit; the total adjustments made to the surplus account; and finally concludes with the adjusted net worth as reflected in the balance sheets at April 30, 1941. The explanation for the total difference in both profit and loss and surplus is itemized under the captions of "Revision of Depreciation" and "Other Adjustments." And, again, to illustrate the purpose of this  
966 statement, we will take the first company on the schedule.

As of April 30, 1941, Consolidated Motor Lines showed a net worth, in accordance with their own books, of \$783,532.29.

The same figure, incidentally, is reflected in the balance sheets, in our report, which is Exhibit 12—pardon me—Exhibit——

Q. It is Exhibit 12.

A. Pages 10 and 11 of Exhibit 12. We have reduced Consolidated's profit by \$67,816.46. We have increased their surplus by \$62,571.13. And their treasury stock has been reduced by \$36,000, making——

Q. Excuse me, Mr. Reicher. The brackets indicate reductions?

A. Reductions. Making total adjustments \$41,000, and leaves the net worth as adjusted \$742,286.96.

Explaining the \$67,816.46 for profit and loss adjustments, we have a column called "Additions to P. & L." To explain the changes in surplus, we have a column called "Additions to Surplus." The items not in brackets are additions. The items in brackets are deductions.

Now, you will notice at the bottom of the P. & L. column the total of \$67,816.46, and the total of the surplus column \$62,571.13, and the changes that were made are explained by the respective items in these two columns.

To illustrate further, with respect to revenue equipment—that is item 2—we have reduced the company's depreciation of 967 revenue equipment by \$2,000; \$327 was reduction in depreciation for the current year; \$1,600 was applicable to prior years, and consequently credited to the surplus account. And so for all these depreciation adjustments.

When we get to item No. 8, which is depreciation adjustment account, that deals with profits or losses on equipment traded or sold. We have reduced the company's current profit on trades by \$4,758.71 and credited the surplus account. Of course, we found that these trades were applicable to a prior year.

In dealing with the next item, No. 9, prepaid tires, you find that we have reduced the company's prepaid tires by approximately \$8,000; \$5,700 of that was applicable to the current year, thus reducing the profits for the current year by that amount; and \$2,387 was applicable to prior years, and therefore charged to surplus.

Item 10, reserve for uncollectible revenue——

Q. That says "Reserves." That is a misprint.

A. That is a misprint.

Q. It should read "Revenue."

A. "Revenue." The total of the adjustment was approximately \$36,647. Twenty-five thousand dollars of that we determined was applicable to the prior years, and therefore we merely credited surplus; \$11,422 of that amount applied 968 to the current year, and therefore we reduced the company's write-offs for uncollective revenue by that amount.

Item 15 represents invoices unrecorded up to April 30, 1941, which were uncovered in the examination in May, June, or July. These invoices were produced by the company, and we accordingly entered them, reducing the company's profits and setting a liability up on the company's books.

Incidentally, under item No. 31 there is \$10,269.44 representing bills entered in May, June, and July of 1940 which were applicable to the period prior to April 30, 1940. Accordingly we eliminated those expenses from the year's operations and applied them to the previous year by charging them to surplus.

Item No. 17 is an adjustment of insurance dividends receivable. The company has been setting up a dividend receivable of 45 percent of its premiums, and we have, as previously explained, revised that dividend to 40 percent, based on experience. And therefore we reduced the expense by \$10,000 and increased surplus by \$6,000.

Inventories were—well, the company had \$5,200 of waybills and claims; \$650 of that affected the expense for the current year, and \$4,500 affected the expense for the previous year.

Item 19 represents intangibles of \$2,600, which were charged off in accordance with the provisions of the contract; accordingly charged to the surplus account.

969 Item No. 20 represents Christmas gifts and other expenses which the company writes off during the course of the year. In accordance with the provisions of the contract, expenses of this description were to be written off the balance sheet at April 30, 1941, and accordingly these items were charged to the expenses and taken out of the prepaid items. &

Sundry receivables. We found there were miscellaneous deposits of \$885 which the company had made in prior years. We had written those off because confirmants indicated that they were consumed.

Insurance reserves, item 22: There is an adjustment of \$53,400 in P. I. and P. D. cargo claims. In adjusting this item we reduced the company's expenses by \$14,000 for the current year, and allocated \$39,000 to surplus. The company's policy with respect to P. I. and P. D. claims is to set up accruals on a mileage basis—they have done that for a period of years—and establish reserves, which were excessive and much higher than the amount of the actual claim. With respect to cargo claims, the company operates the same way, but sets up its reserves on a poundage basis. That was adjusted, the record being as I just indicated, the expenses being reduced by \$14,000 for the current year and \$39,000 went back to surplus.

Pay roll taxes were excessive to the extent of \$1,000—\$1,232 was applicable to the current year, and therefore the

970 expense was reduced by that; \$241 was applicable to the prior year, and it was charged to surplus. Capital stock tax, item No. 24, was accordingly adjusted. That also applies to local taxes.

Item 27 refers to State and federal income taxes. We have made an adjustment there of \$32,000. Almost all of it is attributable to excess profits taxes. The company did not set up excess profits taxes on this income, for the reason that it believes it is not subject to excess profits tax and is entitled to certain credits. We did not agree with the company's opinion; consequently set up this liability for \$32,000. No. 28 represents other balance sheet adjustments, making a difference of \$900. We increased the company's expenses by \$1,800 and increased surplus by \$900.

Item 29 refers to conversion to 4/30/41 fiscal year. Consolidated Motor Lines is on a period basis, and its period, instead of ending on April 30, ended on May 17, 1941; and likewise the period began on May 18, 1940. We had to adjust the profits for the current year to bring it back to the April 30, 1941, date, and accordingly reduced the profits at April 30, 1941, by \$34,000 and adjusted surplus—I wish to state that otherwise. We adjusted the profits by \$47,000. \$34,000 is applicable to the current year and \$13,000 is chargeable to surplus. Of course, that 971 was the adjustment made as of April 30, 1940. We have set up for all companies a reserve for contingencies of \$1,000, as represented by item No. 30. Item No. 31 was previously mentioned.

Q. Excuse me. Before you go on will you say a little more as to the reason for setting up the thousand dollars and its relationship to the contract?

A. The contract provides that the companies are liable for contingent liabilities, or such liabilities that may develop at a later date.

Q. The stockholders, you mean.

A. The stockholders—for liabilities which may develop by a later date, and they are not disclosed by the companies' books or by our statement. We set up a thousand dollars to cover all of these liabilities, including unrecorded liabilities, assessments for additional taxes, perhaps the loss of a stock certificate, where a stockholder may file a claim of any kind, a difference in a reserve for P. I. and P. D. insurance, or for cargo claims, and general items of that description. Item 32—

Q. I want to continue on that a little more.

A. I beg your pardon.

Q. What is the effect under the contract if this thousand dollar reserve is inadequate?

A. In the event that the thousand dollars is inadequate, 972 then the contract provides a 15 percent hold-back provision, that is, that under the contract 15 percent of preferred stock and 15 percent of common stock is being withheld so that the respective stockholders of the companies as they now exist will pay for their proportionate part of the company's contingent obligations which materialize.

Q. That is what I meant.

A. Item No. 32, officers' life insurance. We have eliminated life insurance premiums on officers from the expenses and charged them to surplus in all companies. Item No. 33, other miscellaneous items of a similar nature, where we have increased the expenses of the company by \$500.41 and increased surplus. In other words, we took it out of the expense account and transferred it to the surplus account. Those items represent the total differences of \$67,816.46, representing the reduction in Consolidated's profit, and also the total reduction in the company's surplus of \$62,571.13.

Q. You mean additions.

A. I am sorry—additions to the company's surplus in the amount of \$62,571.13. The same procedure applies to all these companies, for both the carriers and the noncarriers.

Q. Mr. Reicher, in the application which has been filed in this matter, there were certain financial exhibits also prepared 973 by you, and in certain of those financial exhibits, for example, Exhibits B-2 and B-6 of the application, reference is made to adjusted assets and liabilities and adjusted net worths of the various companies; also adjusted P. & L. as compared to the book net worth and the book P. & L. What is the intention with respect to the figures in Exhibit 12, to which we are now referring, in regard to those adjusted ones which appeared in the application?

A. The figures in the application were preliminary and tentative. The figures in Exhibit 12 are final as adjusted. We were obliged to furnish these figures hurriedly in order to get the application filed, and numerous adjustments were made after the preparation of these preliminary figures. All the statements contained in the application have a footnote to the effect that they are subject to revision and that they are only tentative.

Q. And the revision is contained in this Exhibit 12?

A. Yes, sir.

Q. Mr. Reicher, have you with you at this hearing the work sheets, records, and documents which you developed during your audit and from which Exhibits 12 and 13 have been prepared?

A. Yes, sir. We have all the papers in connection with this particular examination with us here.

Q. And have you also brought with you four of the auditors who were in charge of the work under you in making the audits of the various companies?

974 A. Yes, sir.

Q. And they are present here today?

A. Yes, sir.

Q. One thing more and I will be finished with you for the moment. Will you refer to Exhibit 12. So that it will appear clearly in the record, tell us what the net result of your adjustments as to net worth and as to P. and L. was with respect to the book net worth and the book P. and L. of the companies.

A. Yes, sir.

Q. I do not mean the individual companies; I mean the consolidated picture.

A. I am referring to page 11 of the pro-forma balance sheet, which, incidentally, shows the net worth of the companies before adjustments and net worth after adjustments. It is about two-thirds from the left. The net reduction in the capital and surplus of the companies was \$177,749.23, which reduces the companies' net worth as reflected by their books from \$5,077,992.47 to \$4,900,243.24. Page 8 shows the companies' total profit to be \$1,403,415.50. We have reduced that—

Q. That is per books.

A. Per books. We have reduced that profit by \$137, 975 260.37 to a net profit as adjusted of \$1,266,155.13, to which we have added the non-recurring expenses included in the contract of \$192,103.68, reduced that by taxes of \$74,350.19, and arrived at a total profit as adjusted in the amount of \$1,383,908.62.

Mr. SULLIVAN. That is all the questions I have of Mr. Reicher at this time. I want to say, however, that I may recall him sometime tomorrow for a few questions, and I want to further make this offer to any of the interveners or protestants, that any cross-examination that they feel unable to complete of him here and now, I consent that they may carry over until tomorrow, in case they want to study the exhibits in between, or something of that sort.

Exam. BAKER. Very well. Any cross-examination?

Mr. WIPRUD. I have a few questions, Mr. Examiner.

Cross-examination by Mr. WIPRUD:

Q. Mr. Reicher, in your capacity as accountant for the lines which are involved in this merger, have you access to the books on tonnage?

A. Yes, sir.

Q. How were those tonnage accounts kept?

A. We made no reference to them. That information did not concern us.

Q. Well, did the accounts show interchange tonnage?

976 A. They had records showing—I believe most of the companies, perhaps all the companies, have accounts showing interchange of tonnage. But we have no such statistics. We were not concerned with such statistics here.

Q. Yes; I understand. But each of the companies have accounts or records showing interchange tonnage?

A. I believe they have, sir.

Q. Will you refer to page 14 of Exhibit No. 12.

A. Yes, sir.

Q. The second item on the assets side, shown as notes receivable \$15,620, what does that represent?

A. That represents a note from Mr. Seymour in connection with his subscription to the stock of the company.

Q. Do you know from your examination of the records whether or not the note was secured?

A. I think it is. In fact, I know it is.

Q. Do you know what it was secured by?

A. It was secured by stock in one of Mr. Seymour's companies.

Q. You do not recall the company?

A. I believe it is Terminal Taxi-Cab—one of the Terminal companies; I do not remember which one.

Q. It is a one-signature note, is it? There are no other signers of the note?

A. I believe that is correct.

Mr. SULLIVAN. That is correct. I will stipulate it.

977 The WITNESS. That is correct.

By Mr. WIPRED:

Q. Now, if you will turn to page—

A. May I add in connection with that item that \$15,620 is only part of the subscription. Mr. Seymour paid approximately sixteen or seventeen thousand in cash.

Q. Yes; I understand. Will you refer, Mr. Reicher, to page 4 of Exhibit 12, which is a consolidating balance sheet of the noncarrier companies.

A. Yes, sir.

Q. Under the item there, Brown Equipment & Manufacturing Company.

A. Yes, sir.

Q. The total capital stock is shown at \$100,000. Is that correct?

A. Yes, sir.

Q. Now, on page 7 of this exhibit, under the heading "Brown Equipment & Manufacturing Co., Inc."—

A. Yes, sir.

Q. Is shown income including the adjusted net profit after taxes of this company.

A. Yes, sir.

Q. That item is \$104,662.71. Isn't that right?

A. That is correct, sir.

Q. And this is a company that is wholly owned by Mr. 978 Horton, president of the Horton Motor Lines; is that correct?

A. I think he owns practically all of the stock. There may be some shares.—

Mr. HORTON. I own it all.

The WITNESS. Mr. Horton owns it all.

By Mr. WIPRUD:

Q. Now, if you will refer to page 27 of this exhibit, which purports to show the cash requirements of the companies included in this proposed merger as of April 30, 1941.

A. Yes, sir.

Q. Will you explain, if you will, the item shown as accounts payable? Can you break that \$1,546,633.24 down for us?

A. If you will refer to page 2 of the exhibit—I will try to identify the items. I think I can do it exactly for you. I am going to try to show you how these figures tie in, if you don't mind.

Q. I want you to break down that figure right now, Mr. Reicher.

A. All right. It includes \$1,243,958.80 appearing as accounts payable—trade and others.

Q. What is that accounts payable?

A. \$1,243,958.80. That is on page 2. \$178,201.45; \$124,472.99; and \$1,243,958.80—all appearing on page 2. The total of those will produce \$1,546,633.24.

Q. The first item shown on that sheet, sheet No. 2, ac- 979 counts payable—associated companies, is that an intercompany account? Will you explain that item?

A. We eliminated the strictly intercompany accounts, and the balance represents companies which are more or less affiliated, but not intercompany.

Q. And will you name the affiliated companies.

A. I don't think I can. By "affiliated companies" I mean companies which—well, companies which are not really affiliated with the corporations included in this application, but were affiliated perhaps through some interest which the stockholders in these companies may have in other companies.

Q. Well, why should that account be distinguishable from account 2050, which is accounts payable—trade and others?

A. Only because there is some association. There is no real reason for it. They can be consolidated after the elimination of \$192,000.

Mr. WIPRUD. I would like to ask counsel if some other witness can explain that item, what he means by affiliated companies.

The WITNESS. Would you like a schedule of that?

Mr. WIPRUD. The reason for the separate treatment of that item.

Mr. SULLIVAN. I do not know that anyone except Mr. Reicher can do it.

EXAMS. BAKER. Mr. Reicher, isn't that \$192,000 shown as an elimination mostly in accounts receivable due subsidiaries of the Consolidated Motor Lines? \*

The WITNESS. Page 5, the schedule, shows the elimination of \$192,000. It shows the amount due to Brown Equipment & Manufacturing Company \$182,437.71; Conger Realty Company, \$900; Barnwell Warehouse & Brokerage Company, \$9,164.86. Those are directly affiliated companies which are in this merger.

By Mr. WIPRUD:

Q. Then, this item here refers to accounts payable—

A. It says associated companies.

Q. Of these associated companies.

A. I beg your pardon. No. Page 5 refers to accounts payable of affiliated companies. If you turn to page 1 you will find a similar item reducing the accounts receivable by—reducing the assets, if you will, by \$192,502.57, and we likewise reduced the liabilities.

Q. All I am driving at, Mr. Reicher, is what these accounts are and what you mean by "Associated companies." I realize that you have an offsetting item on the asset side—

A. That is right.

Q. But in arriving at the figure that you did, on sheet 27 of this exhibit it shows an item of \$1,546,633.24, and an item for which cash is required in the event all these companies stop business all of a sudden. What we would like to do is to have the item broken down to show exactly what such item is.

A. I will give you that.

Q. All right.

A. You first have to refer to page 1 and follow that line Accounts Receivable—Associated Companies. The first accounts receivable you come to in connection with associated companies is \$7,534.59. Now, if you refer to page 2 you find \$178,000 is an account payable in connection with associated companies. The difference is \$173,000 due to associated companies. Is that clear?

Q. I ask you if you mean by "associated companies" any of the companies which are affiliated by stock ownership in the proposed merger?

A. By "stock ownership" you mean through stockholders, not through the company. I just want to get—

Q. Well, will you explain what it is.

A. I do not understand the question.

Q. Well, what do you mean by an associated company?

A. An associated company is a company in which one company may have an interest in another company.

Q. All right. What are those companies insofar as this item is concerned.

A. Insofar as this item is concerned, M. Moran Transportation

Lines does business with a company called Division Com-  
pany, another company called International Parts, and M.

Moran owns no part of any of these companies, but the stockholders have some interest in those companies. We consider them associated companies. That is our interpretation of them.

Exam. BAKER. Actually, Mr. Reicher, that Division Supply & Sales Company, to which you refer, is presently an associated company of Moran; is it not?

The WITNESS. That is correct, sir.

Exam. BAKER. But after consummation of this transaction, if it is approved and consummated, that would no longer be an associated company of the Associated Transport, Inc., would it?

The WITNESS. That is correct.

In connection with Horton Motor Lines, which is the next one, you have \$182,437.71. I showed you on page 5 we eliminated the amount offsetting the accounts receivable. If you refer to page 5 again you will find \$182,437.71 which is eliminated in that total of \$192,502.57.

Exam. BAKER. I believe the only amount which is not eliminated is the amount which is carried under Moran, is it not? That is identical with the figure in the last column.

The WITNESS. That is correct, sir. Moran was the only item.

Mr. WIPRUD. I would like, Mr. Examiner, to pursue that  
questioning a little more tomorrow, when I have had an opportunity to examine the exhibit further. I would like to proceed with a few more questions in connection with it at this time.

By Mr. WIPRUD:

Q. Mr. Reicher, referring to the item shown on page 27, Exhibit No. 12, of \$554,593.34, Equipment and Other Obligations Maturing Within One Year, and to the item on page 26 of that exhibit, Amounts Owning, Payable after One Year, \$710,148.16,

A. Yes, sir.

Q. Am I correct in assuming that those two items constitute the equipment obligations of the companies?

A. That is correct, sir. They are equipment obligations as reflected on page 2 of the same exhibit.

Q. Now, if you refer to the Exhibit B-2 attached to the application in this proceeding, the total capitalization of the eight companies—

A. May I interrupt a moment? I would like to find B-2. I have it. Yes, sir.

Q. The total capitalization of the companies involved in the proposed merger is shown as \$1,107,690, is it not?

A. That is the total capital stock.

Q. Now, referring to Exhibit C-7 of this application—

A. I have it.

Q. Referring to that exhibit which is "Giving Effect" balance sheet of Associated Transport, the proposed capitalization would be \$6,208,003, would it not?

984 A. Yes, sir; based on that.

Q. Now, the proposed increase of capitalization of these companies when unified reflects the conversion of the unappropriated surplus of the individual companies in the capital stock, does it not?

A. That is correct.

Q. Now, is it your contention that the proposed increase of capital corrects a situation that might have been considered in previous years?

The WITNESS. I should like to consider that question. Would you mind reading it, please?

(Question read.)

A. Possibly. I think that may be so.

By Mr. WIPRUD:

Q. Mr. Reicher, what do you consider as capitalizable assets of a motor carrier?

A. I think your question is a little vague. What do I consider capitalizable assets of a motor carrier? Well, I consider—I will try to answer your question as I understand it. I consider assets such as revenue equipment, structures, buildings, accounts receivable. As I answer this question I am trying to understand the inquiry. Do you mean what would I consider as assets which may be properly purchased for capital rather than liabilities?

Q. Properly capitalized.

985 A. Well, in accounting nomenclature you capitalize all assets which are true assets, and you cannot capitalize expenses. Now, I am trying to give you that distinction. I

do not understand what you mean. I am afraid you will have to clarify your question.

**Q.** Well, is there anything in addition to the physical assets of a motor carrier that can be capitalized?

**A.** Yes.

**Exam. BAKER.** Mr. Wiprud, do you have reference to what the Commission considers capitalizing assets?

**Mr. WIPRUD.** No. I have a point to bring out here, Mr. Examiner. If I may proceed for just a moment I think it will become clear.

**Exam. BAKER.** Perhaps you had better read the last question. (Question read.)

**The WITNESS.** My thought on the subject is merely this, that a company should acquire fixed assets, as distinguished from capitalizable assets, whatever that may mean, with capital. Current assets might be acquired through current liabilities.

**By Mr. WIPRUD:**

**Q.** Well, I will repeat the question. I think we got away from it. Do you think that the assets of a motor carrier that should be capitalized are only physical assets?

**Mr. SULLIVAN.** Excuse me. I object to Mr. Reicher 986 having an opinion one way or the other as to whether he thinks this should be capitalized or that should be capitalized. He has passed his C. P. A. examination a long time ago.

**Exam. BAKER.** I think that is for the Commission is to decide as to what should be capitalized. I do not believe Mr. Reicher is qualified to pass on that type of matter. I do not believe that the line of questioning is relevant.

**By Mr. WIPRUD:**

**Q.** Insofar as the proposed unification is concerned, is it your contention that there is not concern better capitalized here?

**A.** That is correct, sir.

**Q.** Now, if you will refer to page 16 of Exhibit 12, I believe that you show the amount available for dividends under common stock as \$1,178,305.85. Is that correct?

**A.** Would you mind repeating the amount you called?

**Q.** \$1,178,305.85.

**A.** And did I understand you to say that that was the amount available for dividends?

**Q.** Net available for common stock.

**A.** That is correct; net available for common stock distribution.

**Q.** Now, giving effect to this amount, is it not a fact that there would be available then for distribution to the common stockholders of \$1 par value common stock an amount one and one-half times the value each year?

987 A. I am afraid I did not quite understand your question. Would you mind repeating that question?

(Question read.)

Mr. WIPRUD. I will withdraw that question, Mr. Examiner and ask this:

By Mr. WIPRUD:

Q. What is the net profit of the combined companies, or what would it be for the year 1941, as shown by this exhibit?

A. \$1,765,528.76.

Exam. BAKER. What period is that, Mr. Reicher?

The WITNESS. That is estimated for the year 1941.

Mr. SULLIVAN: What page is it?

The WITNESS. That is on page 9.

By Mr. WIPRUD:

Q. Now, to arrive at the amount available for dividends on the common stock, what item would you deduct from that?

A. We would deduct the preferred dividend first of \$227,653.94, which is item 12 on page 16.

Q. And that would leave what amount available for dividends on the common stock?

Exam. BAKER. Mr. Reicher, wouldn't you also have to deduct the dividend on the million and a half additional stock?

The WITNESS. You are absolutely correct sir. That is ninety thousand additional. That would leave \$1,447,000 available for the common stock.

988 Mr. Fagg. Mr. Witness, do you now correct your item 12 by increasing that by \$90,000?

The WITNESS. No. Item 12 has no connection with the million and a half dollars of stock to be issued for working capital. Item 12 on page 16 merely shows the method we employed distributing common stock to the various companies. It has no relationship at all to the total preferred dividends to be paid by the companies. It is merely the formula by which we arrived at the common stock distribution.

Mr. Fagg. But the million and a half is preferred, is it not?

The WITNESS. Yes, sir.

Mr. Fagg. Bearing 6 percent.

The WITNESS. Yes.

By Mr. WIPRUD:

Q. Referring back to the item, dividends, \$1,447,000, Mr. Reicher.

A. Yes, sir.

Q. It is evident, is it not, that the par value of the common stock of \$1 would be turned over twice each year?

A. That appears to be correct, sir.

Q. Then, it follows that the common stock has a value far in excess of its par value, does it not?

Mr. SULLIVAN. I object to that. Aren't we getting pretty far afield?

Exam. BAKER. I think the question is argumentative.  
989 The objection is sustained.

By Mr. WIPRUD:

Q. Assuming a fair return of 10 percent based upon the amount available for the common stock as dividends on the common stock, it is evident, is it not, Mr. Reicher, that the common stock has a real value, not of \$700,000, its par value, but \$14,470,000?

Mr. SULLIVAN. I object on the ground that it is immaterial. That is not a part of this hearing.

Mr. WIPRUD. Mr. Examiner, I think that it will become increasingly evident that it is a part of this hearing. We have some testimony here in regard to the interests of various parties in the common stock of this company. I think that the representation has been made here that the company is capitalized at less than its tangible worth, and we also have testimony here that this is a company of extreme earning power. I think these questions are pertinent to the issues in this case, particularly in the light of the testimony of Mr. Seymour in regard to his anticipated increased earnings of the common stock of this company.

Exam. BAKER. Will you read that question, please.

(Question read.)

Exam. BAKER. Do you understand that question, Mr. Reicher?

The WITNESS. I don't know. I don't understand the computation. I would like him to indicate how he arrived at the figure, and I will check with him on the basis of 10 percent.

990 I do not entirely agree with his reasoning, but I am willing to do the multiplication with him.

Exam. BAKER. If you do not know, so state. Answer "yes" or "no."

The WITNESS. My answer to that is that I have not attempted the multiplication. I do not know whether the 10 percent figure is correct.

By Mr. WIPRUD:

Q. Well, Mr. Reicher, would you consider a 10 percent return on the investment a fair return?

Mr. SULLIVAN. I object to that on the ground that it can't possibly make any difference in this hearing. The only possible conclusion we can reach from that is that either we ought to have more capital or cut the earnings. Now, the Commission has the right

to cut the earnings by fixing the rate. As far as the capitalization is concerned, instead of trying to increase it so as to reduce the return, if the Commission leaves the earnings where they are, it is the first time I have heard anybody argue we ought to increase the capitalization.

Exam. BAKER. I do not understand the purpose of this line of questions.

Mr. WIPRUD. Mr. Examiner, perhaps I can amplify a little bit on it. The application, of course, in the prior proceeding involved the cash purchase of the stock of these companies.

In this case it is alleged to be an exchange of stock, a  
991 wholly different situation. Insofar as the common stock is concerned, that stock in the former hearing had a par value of \$1, the same as here. It was proposed to sell that stock to Kuhn, Loeb & Company for \$20 a share, and they in turn would sell it to the public at \$22 a share. I do not think it would be seriously contested that in the event that the Commission approves this application, and on the basis of the issuance of this stock at \$1 a share, that there would be any limitation on these companies, or this company, in increasing the par value of that stock held by individual stockholders and selling it at its real value.

I think we are dealing here with values based upon a record which shows earnings as they did in the former case, only you have eight of the companies here, that are the cream of the crop, as against 28 companies in the former hearing.

Exam. BAKER. Isn't that a matter of argument on brief, Mr. Wiprud, rather than asking the witness?

Mr. WIPRUD. Well, undoubtedly it is a matter that can be considered on brief, Mr. Examiner, but we have here an accountant and a lawyer who can perhaps answer several questions here that are pertinent on this particular issue.

Mr. SULLIVAN. Mr. Examiner, I would like to know if he contends that this is along the line of pursuing an investigation of monopolies according to the rather self-serving declaration  
992 he read into the record just before the lunch hour. I think we are getting pretty far afield. His recollection is from some other deal. He is talking about the farmer deal. We haven't got the former deal here. This is the first hearing on this case. It is the first hearing on which these parties came to this Commission. Certainly if he is referring to the Transport Company, we did not have anything to do with the Transport Company. Somebody came around and offered to buy that property, and they agreed, and I don't think it even should be brought into this proceeding.

Exam. BAKER. Mr. Wiprud, I think the facts will speak for themselves. You can argue the question on brief.

By Mr. WIPRUD:

Q. Mr. Reicher, what provision has been made here for the conversion of the preferred stock into common stock?

A. No provision, sir.

Q. No provision for that at all.

A. I presume that some time in the future, if this is approved, request will have to be made for additional common stock for conversion purposes, but at this time there is no provision.

Q. No provision for it at all.

A. By "provision" I presume you mean whether the company has made a request for the Commission of additional common stock for conversion purposes.

Q. That is correct. That has not been done?

A. I do not believe that that is contained in the application.

993 **Exam. BAKER.** Since this point is raised, I intended to ask counsel concerning that feature of the application.

**Mr. SULLIVAN.** That is right, Mr. Examiner. We did not in the original application come here and ask for conversion privileges of the stock, because we were somewhat uncertain as to how much stock would be required. Upon completion of the case some time tomorrow we are going to move to amend the application to ask for 720,000 shares of common stock, instead of 700,000 we ask for here.

We do not, however, contemplate at this time asking the Commission to authorize the common stock to cover the conversion privilege in the event the preferred stockholders should exercise it, on the theory that probably we can come down to the Commission some time later, if this application is approved, and make an application by asking for the additional necessary common stock to take care of the conversion privilege.

**Exam. BAKER.** Mr. Sullivan, it occurred to me if you issue this preferred stock with conversion privilege you are necessarily under legal obligation to issue common stock in the conversion of that preferred stock, and that it would be appropriate for you to amend this application to request the Commission for authority to issue sufficient common stock to convert the preferred stock for which you are seeking authority.

**Mr. SULLIVAN.** When we make our motion to amend the application tomorrow to increase the number of shares of common  
994 stock by 20,000, we will make an appropriate motion to that effect as well.

**Exam. BAKER.** Very well. Any further questions?

By Mr. WIPRUD:

Q. Mr. Reicher, you refer to certain nonrecurring expenses.

A. Yes, sir.

Q. Will you state what they are?

A. Well, each company sets forth the nonrecurring expenses it has in the contract. Most of the items were of this type. Referring to the companies we have Consolidated Motor Lines, \$57,347.16, and referring to the contract of Consolidated Motor Lines you will see a list of nonrecurring items on Schedule I. They read as follows:

Professional services to Coverdale & Colpitts, \$6,452.71.

Phoenix Securities Corporation, \$5,000.

Bonuses to officers and employees, \$45,894.45.

Or a total of \$57,347.16.

The nonrecurring nature of the item is due to the fact that these items will not be repeated in the future.

Q. And what is the total for all of the companies, Mr. Reicher?

A. Page 8 shows total nonrecurring expenses of \$192,103.68, reduced by taxes of \$74,350.19—we applied the tax, incidentally—which leaves a balance of \$117,753.49.

Q. And what basis did you apply at the time?

995 A. We added the nonrecurring expenses to the company's regular income, computed the State taxes, normal taxes, and excess profits taxes, just as though it was part of the company's income.

Mr. WIPRUD: That is all the questions I have now, Mr. Examiner. I may have more questions of the witness tomorrow.

Exam. BAKER. Any further cross-examination?

By Mr. FAGG:

Q. Will you please be referred to Exhibit B-3 of the application covering depreciation rates, wherein you show percentage for depreciation according to contract.

A. Yes, sir.

Q. If the Commission approves this application, is it your purpose to set up the percentage of depreciation, as shown in this exhibit following the words "per contract"?

A. I am afraid that that matter is not within my jurisdiction. We have virtually completed our engagement on the submission of this material. If we are retained in the future to do the job, we would be very happy to do it.

Q. I thought that you would be the accountant for the Associated Transport in the future.

A. Thank you.

Q: Would you care to express an opinion as to whether those percentages for depreciation are reasonable for the future?

A. My opinion—I have been dealing with trucking companies for quite a number of years, at least 10 years. I think that the rates set forth in this schedule are fair and adequate.

996 Q. As to equipment?

A. Yes, sir.

Q. Now, will you please—

A. Type of equipment, and mileage, and cost.

Q. Will you please refer to your Exhibit No. 12, page 10. In the upper right hand corner you show \$1,410,000 under the heading "Giving Effect Transactions Addition."

A. What page was that on, sir?

Q. Page 10.

A. How much is that figure, please?

Q. \$1,410,000.

A. Yes.

Q. Does that represent the \$1,500,000 of new capital less \$90,000?

A. That is correct.

Q. Does that mean that the cost of securing \$1,500,000 will be \$90,000, or 6 percent?

A. No, sir. We arbitrarily set a figure of \$90,000, which we felt will represent the cost of completing this operation, and the selling cost, whatever expenses may be incurred, maybe transfer stamps and things like that, in connection with this million and a half issue.

Mr. SULLIVAN. You have referred to completing this transaction.

997 You mean the expenses of handling this application?  
The WITNESS. That is correct.

Mr. SULLIVAN. And legal expenses and all the others that go with it?

The WITNESS. That is correct, sir.

By Mr. Fagg:

Q. Now, will you refer to page 12 of the same exhibit.

A. Yes, sir.

Q. You again show, under paragraph (b), preferred stock for working capital, one and a half million dollars.

A. That is correct.

Q. What obligation does that carry for return?

A. That would be a 6 percent return. It is 6 percent preferred stock.

Q. At page 13 of the exhibit, seventeenth line from the top, shows "Organization Expense." Has that anything to do with the organization expenses of the new company?

A. Yes. That is \$98,000 that Associated Transport had paid for expenses in addition to \$9,000, which was paid the Transport Company for the records of that company.

Q. That total expense in the exhibit is \$107,000.

A. That is right; ninety-eight and nine, making one hundred and seven.

Q. Now, will you please refer to page 16 of the same exhibit—and I think it would be beneficial to the record if the Examiner will permit me to ask a rather long question, but I think it will make for a short answer—and in order to do that I would like to have you look at your item No. 1, directing attention to Consolidated Motor Lines, Moran Transportation Lines, and the Arrow Carrier Corporation. In item No. 1 you show the net worth for the three companies.

A. That is correct.

Q. Is it correct that the Arrow Carrier Corporation is approximately \$917,000; Moran, \$331,000, and Consolidated \$742,000?

A. That is correct.

Q. Now, on page 6 of this same exhibit you show the fiscal year earnings ending April 30, 1941, and under operating revenue is it true that your exhibit shows for the Consolidated Motor Lines \$5,062,000?

A. That is correct.

Q. M. Moran Transportation Company, \$3,018,000?

A. That is correct.

Q. And the Arrow Carrier Corporation, \$1,559,000?

A. That is correct.

Q. On page 18 of this same exhibit, is it true that the total equipment—

A. What page was that?

Q. Page 18.

A. Yes, sir.

Q. That the total equipment, approximately, for the Consolidated Motor Lines is 700?

A. Just hold on.

Q. Seven hundred.

A. Seven hundred?

Q. Pieces of equipment.

A. Oh. You mean both trucks, tractors, and trailers.

Q. All pieces.

A. All pieces. 697. Yes, sir.

Q. And M. Moran Transportation Company is approximately 575 pieces of equipment?

A. Yes; 574; yes.

Q. And Arrow Carrier Corporation is approximately 280 pieces of equipment?

A. That is correct.

Q. That the net income shown again on page 6 of the Consolidated Motor Lines is approximately \$425,000?

A. Net income?

Q. Net income.

A. On page 6. Net income is—how much did you say, sir?

Q. \$425,000. Net operating income.

A. You just choose to take net operating income; is that it?

Q. Yes.

A. Yes, sir; \$425,000.

Q. And is it true that M. Moran is \$105,000?

A. That is correct.

1000 Q. And that the Arrow Carrier Corporation is approximately \$158,000?

A. That is correct, sir.

Q. Now, can you explain for the record why the Arrow Carrier has a net worth of considerably more than the Consolidated Motor Lines or M. Moran Transportation when the operating revenues of both the Consolidated and M. Moran exceeds Arrow Carrier; that the total pieces of equipment owned by Consolidated and M. Moran exceeds Arrow; and that Consolidated net income exceeds Arrow; and that Moran is about \$50,000 less than Arrow? Can you explain that?

A. I must first add that it is difficult to explain, because you are dealing with a net income operating figure. That does not seem to me to have any special relationship to the acquisition price, if you wish to call it that.

You say that the operating income of Consolidated is \$425,000, and that its net worth is \$742,000; that the operating income of Arrow is \$158,000, and that its net worth is \$917,000. The fact is, however, that the net income of Consolidated is \$263,000. The net income of McCarthy is \$133,000—

Q. Moran.

A. I am sorry. The net income of Moran is \$79,000.

Q. Is this gross net income?

A. Just what do you mean by "gross net income"?

1001 Q. Everything eliminated.

A. Everything what?

Q. Everything eliminated.

A. Well, this is the final net income, including non-recurring items.

Q. All right. Just continue with Arrow now.

A. Yes. And the adjusted final net income of Arrow is \$148,000. Now, I say that on the basis of the agreement among these various companies; and on the basis of a formula which compensates them for earnings and pays them for their net worth, I definitely believe that the amount of common and preferred stock distributed to these companies is equitable and just.

Q. And you figure that the net worth, on that interpretation, is justified on those reasons.

A. I do not think the facts you presented have any bearing on net worth. The net worth is composed—Consolidated might have \$400,000 in cash, or Arrow may have \$10 in cash. You have completely ignored all the other elements comprising net worth. You have ignored the liability section. You have ignored the account receivable, and everything else that enters into net worth.

Q. I thought that you had covered that, because it is a picture to, at least, the shipper as to the future use of this transportation unit, and we thought from your able examination of this that you would have an explanation of that relationship between a carrier whose net worth is higher as compared to other carriers whose net worth was less and their equipment is more than Arrow.

A. I may explain that. I may say that a company with \$100,000 capital may have 200 units but was in a very weak financial condition, whereas another company with no capital may have 50 units and was in a strong financial condition. I believe this, and it is obvious by reference to the statement, that Arrow's financial condition with 280 pieces of equipment and \$917,000 net worth doing only \$1,359,000, from a banking point of view, perhaps is more substantial than Consolidated's position with 697 pieces of equipment and \$742,000 net worth doing a business of \$5,000,000.

On the other hand, if I were offered both companies, and knowing Arrow's net worth to be \$917,000 and Consolidated's net worth to be \$742,000, but also knowing that Consolidated's net income is 263 and Arrow's only 148, I think I would be inclined to pay much more money for the bigger money earner than I would for the company with the larger number of trucks. I would not be interested so much in equipment; I would be interested in earnings.

Q. Would you say that the net worth of the Arrow has also been influenced as a result of their management, as indicated in Exhibit B-3, whereby they are charged 12½ percent depreciation on trucks, 12½ percent on tractors, and 10 percent on trailers?

A. I don't think today that those low depreciation rates have any special bearing, and the reason I say that is that the equipment is comparatively old and practically fully depreciated.

MR. SULLIVAN. Excuse me, Mr. Reicher. Also they had a very high original cost of their equipment, which would justify those rates.

THE WITNESS. Yes, sir.

MR. SULLIVAN. For example, in 1941 their total depreciation for the period April 30, 1940, to April 30, 1941, is shown on Exhibit 12, page 6, to be one hundred and five thousand and some dollars as against, for example, Moran's \$116,000, McCarthy's \$119,000, and Consolidated's \$178,000. So they came up to their total dollars in any event.

THE WITNESS. That is correct.

By Mr. Fagg:

Q. And you are satisfied that the net worth of Arrow is reasonable; is that right?

A. I am, sir.

MR. JOSELOFF. Doesn't real estate figure in that?

THE WITNESS. It may well be. Arrow happens to own a lot of real estate.

By Mr. Fagg:

1004 Q. Are all factors that you refer to included in Exhibit 12?

A. Yes, sir.

Q. And they speak for themselves.

A. Yes, sir.

MR. FAGG. That is all.

EXAM. BAKER. Any further cross-examination?

MR. WIPRUD. Do I understand the witness will be on the stand again?

MR. SULLIVAN. We will bring him back tomorrow.

EXAM. BAKER. Well, since some of the intervenors have indicated a desire to examine Mr. Reicher after they have had an opportunity to study this exhibit, I think now would be the best time to adjourn until tomorrow morning, and Mr. Reicher will resume the stand as soon as we start, and he will be available for cross-examination then. We will adjourn until 9:30 a. m.

(Whereupon, at 5:25 o'clock p. m., September 5, 1941, the hearing was adjourned.)

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## Before the Interstate Commerce Commission

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES  
HEARING ROOM "B."  
I. C. C. BUILDING,

Washington, D. C., September 6, 1941.

Met, pursuant to adjournment, at 9:30 a. m.

Before VERNON V. BAKER, Examiner.

Appearances: (The same as heretofore noted.)

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## PROCEEDINGS

Exam. BAKER. Come to order, please. We will resume the hearing.

Mr. JOSELOFF. I would like to ask permission, Mr. Examiner, before resuming the examination of Mr. Reicher, to put a witness on, a witness who was here all day yesterday and is anxious to take a plane out as soon as he can. It will take only a half hour or so.

Exam. BAKER. Very well. Call your witness.

Mr. JOSELOFF. Mr. O'Day.

J. T. O'DAY, being first duly sworn, testified as follows.

Direct examination by Mr. JOSELOFF:

Q. Your name and address, Mr. O'Day, please.

A. J. T. O'Day, Consolidated Motor Lines, Inc., Hartford, Conn.

Q. What is your position with the Consolidated Motor Lines?

A. Assistant general traffic manager.

Q. How long have you been connected with the Consolidated Motor Lines, Mr. O'Day?

A. Approximately 10 years.

Mr. FAGO. Are you through with the qualifications of this witness?

Mr. JOSELOFF. Yes.

By Mr. JOSELOFF:

Q. I show you an exhibit—

1008 Mr. Fagg. Before you go into that, could you identify this witness with respect to the question of traffic and commercial experience with private industry or other transportation units?

Mr. JOSELOFF. I will be glad to qualify this witness further.

Mr. Fagg. I think that would be well.

Mr. JOSELOFF. In the meantime, I will pass out these exhibits.

Exam. BAKER. All right.

By Mr. JOSELOFF:

Q. In connection with your duties in the traffic department of Consolidated Motor Lines, Mr. O'Day, do you have occasion to come in contact with and observe the competing motor carriers in the territory served by Consolidated Motor Lines?

A. Yes; I do. I might elaborate on that a bit, by stating that I am a member of the National Traffic Committee of the American Trucking Association, a member of the Government Contact Committee of the American Trucking Association, on the board of directors of the New York Motor Carrier Conference; I am on the general rate committee of the Middle Atlantic States Motor Carrier Conference, that is, covering the MC-20 case, the Minimum Rate Order case; also on the general rate committee of the Eastern Motor Freight Conference, the MC-22 Minimum Rate Order case, and I don't know how many other committees throughout New England.

1009 Prior to coming with the Consolidated Motor Lines, I was industrial traffic manager for about eight years.

Q. So that you have been connected with this type of work for the past 17 years; is that correct?

A. I should say all of 17 years—18 years; yes.

Q. I show you an exhibit entitled "Statement Showing Various Points in Massachusetts, Rhode Island, and Connecticut, on the one hand, and New York, N. Y., Jersey City, N. J., Newark, N. J., and Philadelphia, Pa., on the other hand, which Consolidated Motor Lines, Incorporated, has been authorized to serve and a partial number of competitive motor truck carriers serving the same points," and I ask you whether or not that was prepared under your direction and control.

A. Yes; it was.

Mr. JOSELOFF. May I ask that this be marked for identification?

Exam. BAKER. The document described will be marked for identification as "Applicant's Exhibit No. 14."

/"(Exhibit No. 14." Witness O'Day, marked for identification.)

By Mr. JOSELOFF:

Q. Will you take this exhibit, Mr. O'Day, and tell us, please, the nature and scope.

A. This exhibit was designed to show, in a brief way, the competition which exists between certain representative points in the States of Massachusetts, Rhode Island, and Connecticut, on the one hand, and New York, N. Y., Jersey City, N. J., and Newark, N. J., and Philadelphia, on the other hand. It was developed in this manner. I prepared a working sheet identical with this exhibit, except that we did not enter the number of carriers, as shown, for example, in the second to the last horizontal column on the first page of this exhibit. These route numbers which you see here on this exhibit are arbitrary designations, they being assigned without regard to any local, State, or U. S. highway route numbers or route numbers which may be contained in applications, recommended orders, or certificates of the carriers. Any similarity to those is merely coincidental.

Following that, I developed a work sheet identical to Appendix A, except that I did not show anything under the columns headed "Application Docket Number" or "Route Numbers." I listed a hundred and some-odd carriers which, in the main, to my own personal knowledge, I felt operated between all or some of the points in Massachusetts, Rhode Island, and Connecticut, on the one hand, and New York and New Jersey points and Philadelphia, on the other.

Following that, we went through the files of the Interstate commerce commission and obtained the application docket numbers, and then we went through the dockets in the files of the Commission in Room 7048, incidentally, of the Post Office

Building up here, to get the applications or recommended orders or certificates of these carriers. We went through those documents, and wherever we found that any of these carriers operated between any of these points in the New England States in question, on the one hand, and New York, N. Y., Newark, N. J., or Philadelphia, on the other hand, we assigned after that carrier's name in the column headed "Route Numbers," the route number corresponding to the numbers as shown in the exhibit proper, for example.

We were unable to obtain all of the dockets from the files of the Commission. We were given to understand that a good many of these dockets are out in the field, apparently in the hands of the Examiners. Others were out of the file, and a clerk over

there had no record of where they were. This exhibit here is to show the ordinary operations of these carriers—

Mr. Fagg. Mr. Witness, when you say "these carriers," are they all interstate carriers?

The WITNESS. That is right. These are only interstate common carriers, excepting two carriers which are shown in Appendix A, and which we have indicated as irregular common carriers of commodities generally. The reason that these two carriers happen to be here in this Appendix A is because they were entered by me on the work sheet, and since they were shown as irregular common carriers, in checking their certificate or application or recommended order, handling commodities generally between these points, they were automatically entered on this exhibit which we prepared.

All of these carriers, except those two, as I said, are regular common carriers operating between those points, handling commodities generally. It does not include irregular common carriers, except those two. It does not include contract carriers, private carriers, railroad competition, or water line competition.

By Mr. JOSELOFF:

Q. Now, Mr. O'Day, as I understand this exhibit, it is supplementary to the exhibit introduced by Mr. Henry Howell, of the McCarthy Freight System, regarding—

A. That is right.

Q. Let me finish my question. Regarding existing competition in New England with the lines of McCarthy and Consolidated?

A. That is correct.

Q. It is confined, then, to the so-called longer line routes, that is, between certain New England points and these points of New York City and below New York City.

A. Just those between New England points as enumerated here on the exhibit on the one hand, and New York, N. Y., Jersey city and Newark, N. J., and Philadelphia, Pa., on the other hand.

Q. This does not, then, purport to show the remaining or existing motor carrier competition of the entire routes of Consolidated Motor Lines?

1013 A. Oh, no; absolutely not.

Q. Now, looking at page 1, the column "Route 1 Series," will you explain by an example or two just how this exhibit reads and what it purports to describe?

A. Under the caption of "Routes" there in the second column, "Route 1 Series," we will take route 1A. That purports to show services between Lawrence, Mass., and Philadelphia, Pa. Route 1B—

Q. No; just complete what that shows. In other words, just run through the entire description to show what that reading will indicate as to competition, et cetera.

A. I see. Route 1—

Q. Route 1A.

A. Route 1A is designed to show the through service between Lawrence and Philadelphia, showing that we have developed that five carriers operate between those two points from the list of carriers which is entered, for the main part, from my own knowledge on the work sheet.

Q. Now, that number of carriers appears posted on the horizontal column headed "Number of Carriers."

A. That is correct.

Q. Let us take the point of Providence, R. I., under the route 1 carriers. What would that indicate?

A. That would indicate the through service from Providence to Philadelphia under route 1-C, showing that six carriers of  
1014 enumerated in Appendix A of this exhibit operate between those two points.

Q. Then, these vertical lines in the column "Route 1 Series," being of dissimilar lengths, indicate what, Mr. O'Day?

A. They indicate the through service from the various points in New England, on the one hand—between, rather, the various points in New England, or these three States in New England, rather, on the one hand, and Philadelphia, on the other hand.

Q. Let us take the column "Route 2C Series." Will you explain how that is to be read, with a typical example or two?

A. Route 2A, for example, is designed to show through service between Lawrence, Mass., and Newark, N. J., and that shows that 10 carriers of the total number of carriers listed in Appendix A of this exhibit as operating between those two points.

Q. How do we know it is supposed to indicate service between these representative points and Newark? I want you to explain, in other words, why the lines in the column "Route 2 Series" are cut off at the bottom and are not as long as the lines in your column "Route 1 Series."

A. Well, we purported to show the through service from these points in Massachusetts and Rhode Island, or, rather, between these points in Massachusetts, Rhode Island, and Connecticut, as listed, on the one hand, and Philadelphia, on the other hand, in one instance, and that is provided for under "Route 1  
1015 Series." Then we purported to show the service between those same points in those New England States, on the one hand, and Newark, N. J., on the other hand. In the third column—

Q. That is the column headed "Route 3 Series"?

A. The column headed "Route 3 Series"—we purport to show the through service between these same points in these three New England States, on the one hand, and Jersey City, N. J., on the other hand.

Q. And that theory is followed—

A. Followed right through.

Q. From pages 1 to 4 of this exhibit?

A. That is correct.

Q. Except that on page 2 you have different origin points.

A. That is correct.

Q. That is, on the successive pages you have different origin points, but the identical destination points, New York, N. Y., Jersey City and Newark, N. J., and Philadelphia, Pa.; is that correct?

A. That is correct.

Q. Now, looking at Appendix A of your exhibit, is that to tie in the various carriers with the numbers listed on the first four pages of your exhibit?

A. That is correct.

Q. And these carriers are listed alphabetically?

1016 A. That is correct.

Q. Were you here during Mr. Henry Howell's testimony yesterday, Mr. O'Day?

A. Yes; I was.

Q. You heard him testify and introduce an exhibit concerning remaining competition with the lines of the McCarthy Freight System and Consolidated Motor Lines; you heard that testimony?

A. Yes.

Q. From your own knowledge and experience and opinion, and any other information that you have, I ask you whether or not you concur in that testimony?

A. Yes; I do.

Q. Now, is there any other carrier in the proposed unification having the same operating rights as Consolidated Motor Lines, Inc., as set forth in this particular exhibit?

A. No; there is not.

Q. So that from that standpoint, insofar as this particular exhibit is concerned, then, there would be no elimination of competition?

A. That is correct.

Q. Now, does this exhibit purport to represent the existing or remaining competition between the points of New York, N. Y., and Philadelphia, Pa.?

A. No; it does not. We did not provide for that part or that section of the territory in this exhibit.

1017 Q. From your personal knowledge and from your many years of experience in the motor-carrier industry, and in traffic work, what can you tell us about the existing competition between New York and Philadelphia?

A. I would say that very severe competition exists between those two points. That is common knowledge, and I believe it is generally known that there are hundreds of carriers operating between those two points.

Q. Will you please name for the record a few of the larger ones.

A. Well, there is Davidson Transfer & Storage Company of Baltimore, Md.; Pyramid Motor Express, New York, N. Y.; Shein's Express, New York, N. Y.; York Motor Express, York, Pa.; Baltimore Transfer & Storage Company, Baltimore, Md.; W. T. Cowan Company, Baltimore, Md.; Service Transportation Company, New York, N. Y.; L. S. Filbert, Inc., Philadelphia; Miller Transport, Philadelphia; Seaboard Freight Lines, Inc., New York, N. Y.; Saul Trucking Company, Philadelphia, Pa.; New York & New Brunswick Auto Express, I believe it is, New Brunswick, N. J.; Kirby & Kirby, Trenton, N. J.; Edward T. Conen, Brooklyn, N. Y. They are some of the larger carriers operating between those points.

Q. How many carriers have you listed on this Exhibit No. 14, Mr. O'Day?

A. Approximately 75 or 76 carriers.

1018 Q. And, as you have stated, this is a partial list of carriers, not the entire list of competing carriers?

A. I would say it is very restricted.

Q. You testified, I believe, that you have personal knowledge of the existence of these carriers, and that you prepared the list originally by jotting down carriers of which you had personal knowledge or heard about, and then checking through their operating rights in the Commission's files; is that correct?

A. That is correct, in the main.

Mr. WIPRUD. Will you explain the expression "in the main"?

The WITNESS. Well, in those instances, I would say that in at least 75 of these carriers—

By Mr. JOSELOFF:

Q. Are those of which you have personal knowledge.

A. Those of which I have personal knowledge.

Mr. WIPRUD. I did not mean to interrupt you.

Mr. JOSELOFF. That is all right.

By Mr. JOSELOFF:

Q. Now, in addition to what you have already testified, what can you tell us about the existing or remaining competition insofar as interchange of freight or concurrences are concerned?

A. Well, we have a great deal of competition between New England, on the one hand, and these points in New York and New Jersey, particularly, on the other hand, in the form of water carriers, contract carriers, private carriers, irregular common carriers, and small carriers who handle a great deal of traffic on through rates, under joint working arrangements.

Q. Is there also competition with carriers handling specific or limited commodities?

A. That is true. I forgot about that. We did not attempt to take all, though I did notice in going through the files of the Commission over there that there was a number of carriers who were authorized to handle specific commodities only, which we did not attempt to include in this exhibit.

Mr. JOSELOFF. That is all on direct.

Exam. BAKER. Cross-examine.

Cross-examination by Mr. Fagg:

Q. Did you define specific commodity carriers?

A. In this exhibit?

Q. In your testimony?

A. Did I define them?

Q. Yes; what are they?

A. Well, those are common carriers who are authorized to handle just specific commodities.

Q. Restricted as to the number of commodities they can handle?

A. Well, not the number—the type or class of commodity which they can handle.

Q. Are they in any way a contract carrier?

A. Well; no. They are limited to common carriers—restricted only to the handling of certain commodities.

1020 Q. Over all routes?

A. Over all routes? Just what do you mean by "all routes"?

Q. Wherever they might operate.

A. Wherever they have been granted authority to operate.

Q. Does your Exhibit No. 14 include intrastate common carriers?

A. It does not.

Q. Does it include intrastate contract carriers?

A. It does not.

Q. Does it include intrastate special commodity carriers?

A. It does not.

Mr. Fagg. That is all.

By Mr. Macdonald:

Q. Mr. O'Day, will you state for the record whether all of these carriers are class I carriers?

A. That I can't say. I do believe, though, that a good part of them are class I carriers.

Q. Will you kindly identify those which are class I carriers.

A. Well, I cannot identify all of them. I believe I can identify some of them.

Mr. JOSELOFF. Mr. Examiner, is not this a matter of which the Commission has personal knowledge or records of in its own files?

Mr. Macdonald. Mr. Examiner, before you decide on that, I would like an opportunity to say that these are taken from the files of the Commission. If it is necessary to take any-  
1020 thing, it seems to me it is also necessary that the information should be complete to indicate what it intends to indicate.

Exam. BAKER. The witness may answer, in so far as it is within his knowledge.

A. A. B & C Motor Transportation; Ace Transportation; Adlay Express; Interstate Magazine Haulers; Laskas Motor Lines, Inc.; Laube Motor Lines, Inc.; Lombard Brothers, Inc.; Lowell Trucking Corporation; M. & R. Transportation, Inc.; Moshassuck Transportation Company; National Transportation Company, Inc.; Old Colony Forwarding Corporation; Perrett & Glenny, Inc.; Rickard & Sons, Inc.; H. C. Roulston, Inc.; E. J. Scannell, Inc.; Seaboard Freight Lines; H. T. Smith Express Company; Sommers Motor Lines Company, Inc.; A. Towle Company; White Line Motor Express, Inc.; and Wooster Express, Inc. I feel quite sure that virtually all of those are class I carriers.

By Mr. Macdonald:

Q. And that would necessarily result in the others not having over \$100,000 a year gross operating revenue?

Mr. JOSELOFF. I object to that question. I do not think the witness stated that, nor do I think that is the intent of his answer.

Exam. BAKER. Mr. Macdonald, while I permitted the witness to answer the other question, we have entered into a stipulation that we might refer to the annual report to the Commis-  
1022 sion as to the revenues of these carriers. It seems to me that is the best evidence. What this witness says may be correct or incorrect.

Mr. MACDONALD. Would it be in this record, Mr. Examiner?  
 Exam. BAKER. It has been incorporated by reference.

Mr. MACDONALD. You mean that the Commission has the privilege of going to the annual reports, but unless it is in this record they will not be available for any analysis of the testimony or exhibits offered by applicant?

Exam. BAKER. Any of the parties has the privilege of going to those records and arguing the questions on brief, the same as if it were in this record. The purpose of incorporating them by reference is to avoid making this record too formidable, and we want to shorten it as much as possible. I see no point in duplicating that here. That is better evidence.

Mr. MACDONALD. Insofar as the competitive picture is concerned, Mr. Examiner, we feel that the record should be formidable. We feel that it is necessary for us to do it in order to have the complete picture.

Exam. BAKER. Well, obviously, this witness is not in a position to state whether the revenues of these carriers are all over a hundred thousand dollars. I do not feel that the evidence would be of great weight.

Mr. JOSELOFF. Mr. Examiner, may I ask a question—I mean of you or anybody?

1023 I do not understand that the documents from which this information is secured shows whether they are a class I carrier or not.

Exam. BAKER. The certificate dockets, of course, do not. The annual reports of the carriers would show that.

Mr. MACDONALD. Necessarily, if they are not class I carriers they fall in a lower classification, as I understand it.

Exam. BAKER. I feel that your last question is objectionable. It assumes something that is not in the record. If you want to rephrase your question, you may do so.

By Mr. MACDONALD:

Q. What do you understand, Mr. O'Day, to be the requirement for listing as class I carriers?

A. Carriers having a gross income of \$100,000 or more a year.

Q. In regard to the carriers shown on this Exhibit 12—

Mr. JOSELOFF. You mean Exhibit 14.

Mr. MACDONALD. Exhibit 14. Thank you.

By Mr. MACDONALD:

Q. Can you state what local routes in the New England-Massachusetts area, by way of example, any one of these carriers might have, in addition to its route over the North-South area, from the point of its origination to New York, Jersey City, Newark, or Philadelphia?

A. I don't quite understand that question.

Mr. MACDONALD. Mr. Reporter, will you read the question, please?

(Question read.)

1024 Q. A. I believe that was taken care of to a great extent in the testimony offered by Mr. Howell yesterday. You are asking for through routes which these carriers, certainly some of these carriers in this exhibit, operate over within New England; is that correct?

Q. That is right. Can you answer that question?

Mr. JOSELOFF. I have no objection to it as such to the answering of that question, but I do not like to see it go too far afield. Mr. Examiner. In other words, this exhibit deals with routes between New England and New York, N. Y., and points south. Now, the question to Mr. O'Day deals with routes within New England, which is outside the scope of this particular exhibit.

Exam. BAKER. I will let the witness answer, if he knows. We will see how far it goes.

Mr. MACDONALD. May I state for the record at this time, Mr. Examiner, that we appreciate the desire of the applicant not to enlarge the scope of their exhibits, but we feel it is part of our case, and to demonstrate it to the applicant witnesses is a part of our case, and as I understand it that is a privilege we have, and if the applicant chooses to confine it to certain local areas, it is our privilege to demonstrate the entire relationship between these areas.

Exam. BAKER. You may question him.

Mr. MACDONALD. Thank you.

1025 Exam. BAKER. But I do wish to impress on all parties that they should try to keep this examination within reasonable limits.

The WITNESS. Are you speaking now of interstate operations or of both?

By Mr. MACDONALD:

Q. I am speaking of these carriers which, as I understand it, operate from originating points in the New England area in the more or less long-haul operations down into points between New York and Philadelphia. I want to know what local rights or operating routes they maintain in the New England area which would serve as feeders to their long-haul operations?

A. Well, A. B. and C. of course, operate in Fitchburg, Mass. I believe they also cover Leominster, Greenfield, Worcester, and Boston, and Ayre, Mass. Adley Express covers virtually all points in the States of Connecticut, Massachusetts, and Rhode Island.

Q. Taking those two by way of example, are there areas in which A, B, & C. Motor Transportation Company does not draw from the New England States?

A. Oh, yes; there are.

Q. Excluding New Hampshire, Vermont, and Maine from consideration.

A. I do not believe that they operate into those States.

Q. Are there areas in Connecticut, Rhode Island, or 1026 Massachusetts through which they do not operate?

A. Yes; I believe there are areas, but I do not pretend to know the operating rights of all of these carriers, to answer these questions in their entirety.

Q. Very well. Does your Exhibit No. 14 give any indication as to the comparative gross operating volumes of these carriers?

A. No; it does not.

Q. Does it give any indication as to the number of vehicles operated by each of these carriers?

A. No; it does not.

Q. I believe you stated, Mr. O'Day, that you had some water competition over the routes which your exhibit covers.

A. Yes; it has.

Q. Will you state what that is.

A. Thames River Line, operating out of Bridgeport, covering most of Connecticut via truck operations; Merchants & Miners Transportation Company out of Boston—

Q. Will you please explain—

Mr. JOSELOFF. Why not allow him to finish his answer?

The WITNESS. Yes; let me finish it.

Mr. MACDONALD. All right.

A. Old Colony Navigation Company out of Providence—all of these operate in connection with motor carrier lines. Inci- 1027 dentally, it was pointed out in the first report issued either by the Examiner or the Commission—I just can't recall which—in the MC-22 case, Minimum Rate Order case—in there either the Examiner or the Commission made reference—

Mr. MACDONALD. I do not believe this answer is responsive, Mr. Examiner.

Exam. BAKER. Omit any reference to the MC-22 case.

A. It is generally known, then, that—

Mr. MACDONALD. I believe this is going to be hearsay.

Mr. JOSELOFF. Why don't you wait and see.

Mr. MACDONALD. You asked for the witness of having an opportunity to answer, but he does not seem to want to have it.

The WITNESS. It is not hearsay. As I tried to explain, it is in the report, the first report, I believe—

Exam. BAKER. Just do not refer to the report, but testify to your own personal knowledge.

The WITNESS. The water lines operating between these points, these water lines that I mentioned, to New York and New Jersey area, has certain differential rates, the motor truck operators, and motor common carriers, although their service is comparable.

By Mr. MACDONALD:

Q. Do they carry the same type of merchandise?

A. Yes; commodities generally.

Q. Is it bulk largely, or is it package freight?

A. Well, it is both, I presume.

1028 Q. Will you state which of these lines, if you know, have through rate agreements with operators into the Southern territory, such as Horton and Barnwell?

Mr. JOSELOFF. I object.

Mr. SULLIVAN. Wait. We do not object.

Mr. MACDONALD. Get together, boys.

Exam. BAKER. Come to order, please. The objection is overruled. Do you understand the question?

The WITNESS. Yes; I do. You wish to have me name these carriers which, to my knowledge—

By Mr. MACDONALD:

Q. Will you indicate with which lines they have that arrangement, if you know?

A. I will try to answer that question. These carriers would have joint through rates in connection with the rates published in the carriers named in the Southern Motor Freight Conference tariffs. I believe that is the correct name. I believe it is issued by Shumate, Agent, at Atlanta, Ga. I believe the Adley Express Company is a party to that tariff.

Q. We will limit the question to exchanges which you know to exist with Horton and Barnwell on joint rates.

Exam. BAKER. Mr. Macdonald, do you mean whether or not the carriers actually interchange with Horton and Barnwell, or are you asking him as to whether they have joint rate arrangements with Horton and Barnwell?

1029 Mr. MACDONALD. I am asking him—well, I can ask it both ways, Mr. Examiner. My question was whether they had through rate arrangements. I know that is in the files of the Commission, but it is not of record here. If the question is consequently objectionable, I will ask it as you suggest, if he knows what would be the case as to actual exchange on through rates.

EXAM. BAKER. I am not trying to limit you, but I am merely trying to ascertain what your question is. You can ask him either one you choose.

THE WITNESS. You mentioned interchanges. Is that interchange of traffic that you are talking about?

By Mr. MACDONALD:

Q. Of lading.

A. I mentioned Adley Express Company, Inc.

EXAM. BAKER. Which way are you answering now, Mr. O'Day? Are you stating the companies which you know interchange with Horton and Barnwell, or those which have rate arrangements under which they make interchange?

THE WITNESS. I was attempting to answer the first one, those that operate under joint through rate adjustments with various carriers. You see, in these tariffs the carriers in New England are probably restricted in their interchange operations with 1030 different carriers operating to the South, and yet they are a party to this agency tariff which I referred to a moment ago.

EXAMINER BAKER. Would Horton and Barnwell be parties to that tariff?

THE WITNESS. That is correct.

By Mr. MACDONALD:

Q. Did I understand you to say that some of these carriers would be restricted from these tariffs?

A. Restricted from them?

Q. Yes.

A. They would not be in there if they were restricted from them.

Q. That is the point, is it not—unless they are included they would not share in this interchange of lading.

A. No. Then you would have a combination of rates. There is nothing to prevent them from interchanging lading with southern carriers on a combination of rates.

Q. Will you kindly go back to the first question and state, if you know, what carriers of this group have through rate arrangements with Horton and Barnwell?

A. That was the second question, I believe.

Q. Well, that is not important.

A. Adley Express Company, again—I don't know; I don't think I could give you anything further in a definite way on that. I would be merely guessing.

Q. Very well.

1031 Will you state for the record whether the Magazine Haulers Corporation, listed on page 14, is actually engaged in the carriage of general commodities, whether it is limited?

A. I believe, if it is on this appendix, they are supposed to be authorized to handle commodities generally.

Q. Do you know that they actually do handle commodities generally?

A. I believe they do. As a matter of fact, I am quite sure that they handle commodities, various commodities.

Examiner BAKER. You do not know whether they are authorized to do it?

The WITNESS. According to this exhibit, which we compiled from the dockets over at the Interstate Commerce Commission Building—

Examiner BAKER. You cannot state definitely that the files of the Commission indicate that they are authorized to haul—

The WITNESS. I didn't, personally, go through all of these certificates myself. Somebody else may have gone through that particular one.

By Mr. MACDONALD:

Q. I will ask you the same question in regard to Textile Motor Express, Inc.

A. Textile Motor, I believe, has been authorized to handle commodities generally, as an irregular common carrier.

Q. Do you know of your own knowledge whether they actually do engage in general freight carriage, or whether it is  
1032 limited to a very few commodities?

A. Whether what is limited?

Q. Their actual operations as distinguished from their rights.

A. No; I couldn't say that. We don't follow these trucks around all day to see what is on them.

Mr. MACDONALD. Very well. That is all I have.

Examiner BAKER. Is there any further cross-examination?

Mr. MILLER. I have a few questions.

By Mr. MILLER:

Q. Mr. O'Day, do you know of any one carrier operating between New York City, Philadelphia, and New Jersey points, on the one hand, and New England and New York points on the other, having rights as extensive as the combined operations of Consolidated, McCarthy, and Moran?

A. I didn't get the first part of that question.

Q. Do you know of any one carrier having rights as extensive as the combined rights of McCarthy, Consolidated, and Moran?

A. Yes; I believe I do. I think I will say that Liberty Freight Company, Spector Motor Lines, Keeshin—

Q. Just a moment. Would you mind looking at those carriers that you have named in your Appendix A—

Examiner BAKER. I believe he misunderstood your question, Mr. Miller.

The WITNESS. I don't think Mr. Miller referred to the exhibit, Mr. Examiner.

Examiner BAKER. Mr. Miller referred to any one company that had routes as extensive—I assume you refer to companies which have routes as extensive in this particular territory; is that correct?

Mr. MILLER. That is right—carriers operating between New York City, Philadelphia, and New Jersey points, on the one hand, and New England and New York points, on the other.

A. I believe these carriers such as I have mentioned, and others that I attempted to mention, have a very broad scope of authority, which covers practically the whole Official Classification territory.

Exam. BAKER. Very well, if you understand the question.

The WITNESS. I understand the question.

By Mr. MILLER:

Q. Your answer is not exactly responsive. You know of no one carrier that has rights as extensive as those combined rates of McCarthy, Consolidated, and Moran combined rights?

Mr. SULLIVAN. He stated he knew of four.

By Mr. MILLER:

Q. Well, name them.

Mr. SULLIVAN. He did.

A. I did. I named Liberty Freight Company, I believe, Spector Motor Lines, Interstate Freight System—

Mr. SULLIVAN. You named Seaboard, did you not?

The WITNESS. Keeshin-Seaboard. I believe there is Monarch Freight System; there is All-States.

By Mr. MILLER:

1034 Q. I am afraid you still do not understand my question.

I mean carriers that would be competitive in this territory operating between these points. Now, I assume that if Liberty was a carrier that operates between these points, you would show that on your exhibit here and identify it?

A. That is correct; but I also forgot to list the New England Transportation Company there, if you will notice. As I mentioned a while ago, we were unable to secure a lot of these certificate dockets out of the Interstate Commerce Commission files.

Mr. JOSELOFF. This list is only a partial list; is that correct?

The WITNESS. That is correct. I believe I explained that two or three times before.

By Mr. MILLER:

Q. Well, you mentioned one carrier, Monarch. What is the full name of that.

A. Monarch Motor Freight Express System, I believe it is.

Q. Where do they operate?

A. They operate in Indiana, Ohio, New York, Connecticut, Massachusetts, Rhode Island, New Jersey, and Pennsylvania.

Q. On page 1 of Appendix A of your exhibit, I notice you list ACE Transportation Company, Akron, Ohio. Are you familiar with the operation of that company?

A. Only that I know that they are a common carrier authorized to handle commodities generally, I believe, between these 1035 points. There is another one of those carriers that would probably go into that same list of carriers that I might have mentioned.

Q. Would you say that ACE Transportation is a carrier engaged in transportation between points in New England and points in New Jersey, New York City, and Pennsylvania—would you say that ACE Transportation Company possibly is engaged in transportation between eastern points and points in southern territory?

A. I would like to answer that question by injecting a question, as to what they are going to do tomorrow, and next week and next month—

Exam. BAKER. Answer the question.

By Mr. MILLER:

Q. Would you say of your own knowledge that you know that ACE Transportation Company is presently engaged in transportation between points in Eastern territory and Southern territory?

A. I wouldn't say that. In the last year or so we have experienced quite a bit of competition from those carriers which I have mentioned between Massachusetts and Connecticut points, on the one hand, and New York, New Jersey, and Pennsylvania points, on the other, and points in the upper northwestern New York State.

Q. Rendering a direct service where you would have to interchange; is that correct?

1036 A. Between what points?

Q. Between the points you mentioned, Central territory and Western New York State.

A. We offer a through service between those points.

Q. Does your company carry on interchange in New York and Philadelphia which the number of carriers operating through Virginia and North Carolina and points in the other Southern States?

A. Interchange what?

Q. Freight.

A. Freight? We carry on some interchange of freight; yes.

Q. Could you name me the carriers that Consolidated interchanges with you in New York that are operating into Southern States?

Mr. JOSELOFF. Mr. Examiner, I think we are getting a little far afield again. I think that testimony was brought out when Mr. Abour testified. We then went into the question of interchange, and this would be merely repetitious. This witness can answer it, but it is duplication.

Mr. MILLER. I think he has qualified himself on the record.

Exam. BAKER. Let him answer. Go ahead.

A. Do you want the names of the carriers with whom we interchange traffic?

By Mr. MILLER:

1037 Q. In New York, with carriers operating into the Southern States.

A. Well, we operate with any number of carriers in the South and Southwest out of New York. I don't know who we are going to interchange freight with. We get routing orders that these particular shipments be routed via these different carriers.

Q. Carriers other than Barnwell and Horton?

A. Oh, yes; absolutely. It is apt to be any carrier operating between those points.

Q. Now, in the event that this unification is approved, will that interchange be continued?

Exam. BAKER. Mr. Miller, I do not believe he is qualified to answer that question. He is not an executive officer of the company.

By Mr. MILLER:

Q. I believe you stated that a number of New England carriers, to your knowledge, had restrictions in tariffs in connection with the interchange of freight.

A. Well, I don't think I said a number of carriers. I believe I said that some carriers do have restrictions as to working arrangements with other carriers, but both of them are wide open in the tariff. I believe you are aware of that.

Mr. MULLER. That is all I have.

Mr. MACDONALD. I have a further question or two.

Exam. BAKER. Mr. Macdonald, I am going to permit it this time, but in the interest of orderly procedure, the intervenors should finish their cross-examination at one time and not go  
1938 back and forth between each other.

By Mr. MACDONALD:

Q. Does Consolidated have published through rates with carriers operating from interchange points in New York, Pennsylvania, and New Jersey, into the South?

A. All the carriers—

Q. Can you answer my question?

A. Well, unless you mention the carrier's name. Do you mean all the carriers?

Q. All motor carriers.

A. Oh, all motor carriers operating to these points—

Exam. BAKER. Read the question, Mr. Reporter.

(Question read.)

Mr. MACDONALD. That question is susceptible of a "yes" or "no" answer.

Exam. BAKER. Apparently he means any carrier.

The WITNESS. Any carrier means all carriers. Now—

Mr. SULLIVAN. Just answer it.

The WITNESS. We do interchange freight with a great number of carriers operating to those States.

By Mr. MACDONALD:

Q. On joint rates?

A. On joint rates; on joint through rates.

Mr. MACDONALD. That is all I have.

Mr. BURNETTE. I have one question, please.

By Mr. BURNETTE:

Q. Mr. O'Day, a shipment from Boston—you serve Boston, don't you?

1039 A. Yes; we do.

Q. On a shipment from Boston, Mass., to Lynchburg, Va.—

A. To where?

Q. To Lynchburg, Va.

A. Yes.

Q. You would move that shipment now in connection with Consolidated to New York and Barnwell to Lynchburg; is not that true?

A. That I don't know. I don't attempt to memorize what carriers serve all these transfer points, or where we interchange, whether it be at New York or Philly or Newark or where.

Q. Well, I have this in mind, and maybe you can give me the answer: From Boston to New York, Consolidated, and then from New York to Lynchburg we have Barnwell, Mundy, and Brooks. Now, at the present time we can designate any one of the three. If this proposed merger goes through will there be any change in that condition?

Exam. BAKER. He cannot answer that, Mr. Burnette.

Mr. BURNETTE. He cannot answer it?

Exam. BAKER. That is the question Mr. Miller asked a little while ago. He is not an executive officer of the applicant and cannot pass on a question of policy in the future.

The WITNESS. Although, Mr. Examiner, if it was routed by one or any carrier which he designated, I think they would honor that route.

1040

By Mr. BURNETTE:

Q. Mr. O'Day, speaking of your routes, are you familiar with the tariffs in which the rates are published?

A. Which tariffs?

Q. Tariffs from New England to Southern territory—through the Carolinas, for instance.

A. Do you mean the southern tariffs?

Q. Well, regardless of which tariff it is in, does the motor carrier tariff apply from New England to Southern territory—Carolina territory, for instance?

A. All territory.

Q. Carolina?

A. I am familiar to a certain extent—I am, of course, familiar generally with all tariffs. I don't attempt to go into detail because I have others doing that.

Q. But do you know whether or not there is a minimum charge on tariff from Boston, Mass., to say, for instance, Greensboro, N. C.?

A. Minimum charge?

Q. A minimum charge. For instance, if a commodity is rated third class, and two or more carriers handled it, they provide a minimum in the tariff, say second class, 85 percent. Are you familiar with it?

Exam. BAKER. Mr. Burnette, I am sorry to inject, but if we get into the rate situation here we do not know how long  
1041 this hearing is going to last. I do not believe that is relevant to this case.

Mr. BURNETTE. I think it is of material interest to us to know whether or not the consolidation will eliminate that or if it will restrict it. Of course, if he is not qualified, that is different.

Exam. BAKER. As I stated before, that is a question, it seems to me, that should be directed to some responsible official of the applicant as to what its policies will be in the future.

Mr. BURNETTE. Well, I was speaking of the present, how the tariffs are set up today.

Exam. BAKER. How is that relevant to a proceeding to determine whether or not this unification is consistent with public interest?

Mr. SULLIVAN. You know the answer, don't you?

Mr. BURNETTE. Yes; I know.

Mr. SULLIVAN. We will stipulate that you may put the answer into the record.

Mr. BURNETTE. How?

Mr. SULLIVAN. We will stipulate that you may put the answer you have in mind into the record, that the fact is thus and so.

Exam. BAKER. I see no point in that.

Mr. SULLIVAN. I mean, if he wants to develop it, to cut  
-1042 it short.

Exam. BAKER. My only purpose is to try to keep this hearing within reasonable limits. Have you any further questions, Mr. Burnette?

Mr. BURNETTE. No. That is what I wanted answered.

Exam. BAKER. Will you state the purpose of your question?

Mr. BURNETTE. Well, the purpose of the question was to know whether or not there would be any change in the rates from the present set-up. At the present time, if the traffic is handled over two carriers the minimum is one thing. If it is handled over three or more carriers the minimum is still something else; that is, on traffic between New England and the Carolina territory. Take, for instance, Consolidated, Barnwell, and Horton. They are three which at the present time provide a certain minimum charge in the tariff per shipment. If they consolidate this minimum would not apply in the future. You see the point I am trying to develop, if there would be any change in that.

Exam. BAKER. I still think this witness is not qualified to answer the question.

Mr. BURNETTE. He said he was familiar with the rates and that is the reason I asked him.

Exam. BAKER. Are there any further questions?

Mr. JOSELOFF. I have just two short questions on redirect.

1043

Redirect examination by Mr. JOSELOFF:

Q. Do you know whether or not a water carrier operates between Boston and points, New York City and south thereof, as mentioned in your exhibit?

A. Yes; they do. I am sorry I overlooked mentioning them.

Q. And whether or not you, in preparing this exhibit, and those whom you instructed, took the pains to compare the docket numbers in the Commission's files to determine that commodities generally would be handled by these carriers listed in your exhibit?

Mr. WIPRUD. I object to the question as leading. Let the witness say what he did.

Exam. BAKER. Let him repeat the question. I did not hear it. (Question read.)

Mr. WIPRUD. It is certainly leading.

Mr. JOSELOFF. That question is not leading. I asked him whether or not.

Exam. BAKER. Objection overruled.

A. In this exhibit are shown only carriers which have been authorized to handle commodities generally, as we developed it from the docket certificate files in the Interstate Commerce Commission's office here at Washington, D. C.

Mr. JOSELOFF. That is all.

Exam. BAKER. The witness is excused.

1044 Mr. JOSELOFF. May I introduce this exhibit now as a full exhibit?

Exam. BAKER. Applicant's Exhibit No. 14 will be received in evidence.

(Exhibit No. 14, Witness O'Day, received in evidence.)

(Witness excused.)

Mr. SULLIVAN. We will recall Mr. Reicher.

HARRY J. REICHER was recalled and testified further as follows:

#### REDIRECT EXAMINATION

Mr. SULLIVAN. Shall I proceed?

Exam. BAKER. Yes.

By Mr. SULLIVAN:

Q. Mr. Reicher, yesterday you were asked in cross-examination some questions involving the net worth of the Arrow Company. I wonder if you would tell us something about the net worth of the Arrow Company, how it appears they acquired it, in what manner the assets of that company generally are split up, and other things you feel might be of interest in respect to that subject.

Mr. FAGG. Has the cross-examination of this witness been completed, and are you putting him back on redirect?

Mr. SULLIVAN. I am bringing him back on redirect and anybody can cross-examine him.

A. Arrow Carrier Corporation has a net worth of \$917,1045 887.92 as of April 30, 1941. The net worth consists of current assets, including cash, accounts receivable, and so forth, of \$228,854.23.

By Mr. SULLIVAN:

Q. You are reading from some page of Exhibit 12, Mr. Reicher?

A. I am reading from page 1 of Exhibit 12.

Exam. BAKER. Let us try to avoid reading from the exhibit. If there is any point you want to explain, it will be satisfactory to do that, but there is really no good reason to duplicate what is already in the record.

The WITNESS. If the Examiner please, the only thing I wish to indicate is that the assets of Arrow include land and real estate, which would come out in this summary testimony, summarizing the balance sheet.

Exam. BAKER. Well, proceed to explain that.

The WITNESS. All right. The net worth is largely invested in land and buildings, being a net worth of \$360,000, which is the type of asset most of the other carriers do not have, and which largely explains the large net worth in Arrow as compared with the other carriers.

By Mr. SULLIVAN:

Q. The other carriers, as I understand you, then, mainly lease their properties and pay rent for them, and which, in turn, comes out of earnings?

A. You are referring to terminals? That is correct.

1046 Q. Terminals.

A. Yes; whereas in the Arrow case they have invested their capital and surplus, or a large part of it, in terminal buildings which they own, instead of leasing.

Q. Suppose you answer this question: How did the Arrow Carrier acquire that net worth? Have you anything there that shows how they acquired their large capital and surplus?

A. Arrow Carrier has an invested capital of \$210,000, in addition to which it has consistent earnings all during the years, which were not distributed. The report, on page 12 of the exhibit, shows consistent earnings from 1932 to date. Arrow was in business long before that, and its earnings have been fairly consistent back to 1925, I believe.

Q. So they are like the fellow that saves his money, puts it in the bank and does not spend it, and when he gets through he has a good net worth for himself.

A. That is correct.

Mr. WIPKUD. That is not testimony. I think we should swear counsel.

Mr. SULLIVAN. I wonder if I could at this time have this balance sheet of the Arrow Corporation marked for identification.

Exam. BAKER. Are there two sheets to this?

Mr. SULLIVAN. Two sheets. It completes the whole balance sheet. The purpose of this is to bring into the record the  
1047 note on the bottom of the liability side of this balance sheet, which is the balance sheet attached to the contract between the Transport Company and Associated Transport Company. This accounts for the Hamilton transaction and shows how it was handled.

Exam. BAKER. The document described, consisting of two sheets, and entitled "Exhibit C. Balance Sheet Arrow Carrier Corporation, April 30, 1941," will be marked for identification as Applicant's Exhibit No. 15.

(Exhibit No. 15, Witness Reicher, marked for identification.)

Exam. BAKER. You may proceed, Mr. Sullivan.

By Mr. SULLIVAN:

Q. Mr. Reicher, you are familiar with the contract between the Transport Company and the Associated Transport Company?

A. Yes, sir.

Q. Involved in this application?

A. Yes, sir.

Q. Did you prepare the financial exhibits, or were they prepared under your supervision and attached to the application to this case?

A. Yes.

Q. I show you Applicant's Exhibit No. 15, for identification, and ask you if that is a copy of the balance sheet submitted by the Transport Company as part of its contract in this  
1048 transaction.

A. I believe it is, sir.

Q. And that is the one from which you worked in preparing your exhibit?

A. Yes, sir.

Q. Are you familiar with the note on the bottom of the second of these two sheets of Exhibit No. 15, for identification, entitled "Liabilities, Capital and Surplus"?

A. Yes, sir.

Q. And did you give effect to the provisions of that note in preparing your exhibits and in the figures that you have used here?

A. Yes; I did.

Q. In Exhibit No. 12 as well as in the application?

A. Yes.

Mr. SULLIVAN. I offer this exhibit in evidence, Mr. Examiner. You requested earlier in the proceedings that we produce it for you.

Exam. BAKER. Is there any objection?

Mr. WIPRUD. No objection.

Exam. BAKER. Applicant's Exhibit No. 15 will be received in evidence.

(Exhibit No. 15, witness Reicher, received in evidence.)

1049 The WITNESS. I wish to correct a statement I have made.  
Mr. SULLIVAN. All right.

The WITNESS. I am not sure whether this balance sheet is identically the same as the balance sheet which we worked with in the preparation of this statement or this exhibit.

Mr. SULLIVAN. You mean in Exhibit 12.

The WITNESS. Exhibit 12.

Mr. SULLIVAN. Was it the balance sheet that was attached to the contract in the Arrow-Transport case, the one you held in your hand?

The WITNESS. Yes.

Mr. SULLIVAN. Exhibit No. 15.

The WITNESS. I cannot answer that because I have not the contract, but it looks substantially the same. The reason I raise the question is this: This balance sheet appears to show capital and surplus of \$893,466.89, whereas the balance sheet, as we showed it and from books of Arrow Carrier Corporation, is \$910,666.06, making a difference of \$17,000 between the two balance sheets. In other words, the balance sheet now being submitted is \$17,000 less per books than the balance sheet as it is reflected in Exhibit No. 12 as per the books.

Mr. WIPRUD. Mr. Examiner, I do not know how we are going to have two balance sheets, each of which is correct, if they are different.

1050 Mr. SULLIVAN. That is what I think.

Exam. BAKER. Off the record.

(Discussion off the record.)

Exam. BAKER. Back on the record.

By Mr. SULLIVAN:

Q. Now, Mr. Reicher, I want to ask you with respect to the information contained on the last two pages or so of Exhibit 12, if you can tell us or give us any reasons why you feel that these com-

panies need additional working capital, when they appear to have gotten along without working capital for the last eight or nine years.

A. Might I start by saying that the fact that they have gone along without capital is no indication that—gotten along with insufficient working capital is no indication that the companies are on a good sound footing. The statement on page 26 of the exhibit shows that these companies are employing approximately \$1,500,000 of their creditors' moneys in their fixed investments. If, for some reason, they were estopped from operating for a limited number of weeks, they would find themselves in a position where they would not have sufficient cash or its equivalent to meet their liabilities. It is the gospel truth and an understanding among industrial concerns and banking organizations that for a firm to be in good current condition and be able to meet its bills promptly, its current assets should be, at a minimum, twice its current liabilities.

1051 The schedule on page 27 also clearly shows that the current assets of the company which can be used for the immediate liquidation of current liabilities are short by the sum of approximately \$1,500,000. The only reason, I suppose, the companies have been able to get along may be further explained by the pyramiding of their investments. I think they have overexpanded their capital in the purchase of equipment.

Q. What effect does the present tax situation have on these companies as opposed to the situation under which they worked up to the time when such sharp increases in taxes took place?

A. That is another situation. In the past, the companies built up their equipment through earnings. At least, they have been able to pay for equipment obligations through earnings. Depreciation rates were little higher than presently permitted by the Treasury Department, and the taxes today are considerably higher. Consequently, through reduced depreciation rates, the companies show higher earnings, and through higher tax rates the companies are obliged to pay considerably more in taxes. Consequently, the cash employed for taxes is taken away from the company and cannot be used for the payment of its obligations. Maybe I should modify that—to the extent that increased taxes are paid to  
1052 the Government, they cannot be used for the payment of its current obligations.

Q. Is that true whether or not this merger is accomplished, that these companies will need working capital?

A. That is correct.

Q. What have you to say as to whether individually they need more than they do collectively?

A. I think they need as much individually as they do collectively, and I think they would experience much more difficulty individually than they would collectively; I mean much more difficulty in securing the necessary working capital.

Mr. SULLIVAN. At this time I offer in evidence Exhibits 12 and 13. Those are the two financial exhibits.

Exam. BAKER. Is there any objection to the receipt of those in evidence now, or does intervenor desire to cross-examination first?

Mr. WIPRUD. Do you mean on this last exhibit?

Exam. BAKER. No. Exhibits 12 and 13, the ones which were offered. They were identified yesterday.

Mr. WIPRUD. Before they are admitted in evidence, may we ask a few questions?

Exam. BAKER. First, we will take a recess for 15 minutes.

(There was a short recess taken.)

Exam. BAKER. Come to order, please.

By Mr. SULLIVAN:

1053 Q. Mr. Reicher, just before the recess we were having a discussion with respect to Exhibit No. 15, for identification, the balance sheets attached to the contract in the Transport-Associated Transport deal in this application. There was some discrepancy in the figures. Will you now go into that?

A. The figures we used in our Exhibit 12 as the company's net worth were \$910,666.06. The net worth is reflected in this Exhibit No. —

Q. No. 15.

A. Exhibit No. 15, as \$893,466.89, making a difference of \$17,199.17. This difference is explained by the fact that the company had an accrual on its books for taxes of \$23,802.63, and that accrual was changed to \$41,001.80, making a difference of \$17,199.17. The fact that the accrual was \$17,199.17 less on the books than in the contract produced a higher net worth on the company's books, which they themselves corrected in preparing the contract.

Q. You were just referring to your working papers in the Arrow matter.

A. Yes, sir.

Q. As based on the audit.

A. The papers I referred to are papers reconciling any differences that existed.

Q. And your working papers have the report and the  
1054 contract figure and your adjustment figures.

A. That is correct.

Q. And those figures were developed from the contract itself.

A. That is correct.

**Mr. SULLIVAN.** That is all the questions I have. I will offer the exhibits a little later.

Re-cross-examination by **Mr. WIPRUD**:

**Q.** Which balance sheet do you stand on now—Exhibit 15 or the balance sheet in Exhibit 12?

**A.** We made our examination from the company's books. They showed the net worth as reflected by Exhibit 12. When Arrow prepared this contract, they evidently realized that their taxes were understated, and, therefore, increased their taxes by \$17,199.17, and consequently reduced their net worth by that much money. That was a subsequent adjustment, which we would pick up in our adjustments. We started from the company's books and not from any adjustments that they made after April 1940.

**Q.** Yes. Now, will you answer my question?

**A.** I thought I did, sir.

**Q.** Which financial statement or balance statement do you stand on now—Exhibit 15 or the balance sheet as shown in Exhibit 12?

**A.** We say that the balance sheet is Exhibit 12 is the balance sheet per books. The adjusted balance sheet appears on 1055 page 2 of Exhibit 12. This is the balance sheet per contract, reduced by the additional taxes. The company voluntarily increased their taxes and reduced their net worth.

**Mr. WIPRUD.** I think, Mr. Examiner, the witness has still not answered the question, and in view of his explanation here we will have an objection to Exhibit 15, unless you desire to stand on that exhibit and not on the balance sheet in Exhibit No. 12. There cannot be two different balance sheets for one company.

**Exam. BAKER.** Exhibit No. 15 is already in evidence. It was received without objection. I feel that his explanation shows that the two are consistent. While the figures are different, the balance sheets were prepared on different dates. I think that accounts for the difference in the net worth, and he explained that.

**Mr. WIPRUD.** Mr. Examiner, if I may interrupt there, the balance sheets are on the same date.

**Exam. BAKER.** They are of the same date?

**The WITNESS.** As of the same date.

**Exam. BAKER.** But prepared on different dates.

**Mr. WIPRUD.** I think the record should show that both of these balance sheets, which differ, are of the same date, April 30, 1941, and we will have an objection to the admission of Exhibit No. 12.

**Mr. SULLIVAN.** I think I can help that situation along. 1056 We do not offer this Exhibit 15 with any reference particularly to the figures thereon. We offer it simply to show the note at the bottom with respect to the reduction of the net

worth by \$12,000, by reason of the payment of that amount for the cancellation of the liability under the employment agreement with Mr. John Hamilton. The figures on it have no significance in this proceeding. We do not offer it for that purpose, because, in every case, the figures on which we stand, I think, in the sense that Mr. Wiprud uses them, are, of course, the figures that Mr. Reicher produces as adjusted.

EXAM. BAKER. The record will show the objection.

By Mr. WIPRUD:

Q. Mr. Reicher, you testified that the companies in this proposed merger have operated by pyramiding their investments in the purchase of equipment.

Will you turn now to page 1 of Exhibit No. 12, which shows the money value of the equipment of the individual companies, and page 12, which shows the units, and will you state for the record which of the companies have so pyramided their investments?

A. First, I refer to the total of the investment in equipment—that is, not in equipment, but, rather, in fixed investments, and that is the term I use, of \$5,516,398.79. Schedule 18 merely shows the book values of each company's equipment.

In the case of Consolidated, it shows Consolidated owned 697 pieces of equipment, that is, power units and trailers, as 1057 of April 30, 1941.

I cannot see how reference to page 18 could be of any assistance; except to indicate that they have 697 units; whereas Arrow, if you wish, has 280 units. Arrow has capital, as indicated yesterday, of \$900,000, or approximately \$900,000, and Consolidated has capital of approximately \$700,000. It would appear on the surface that, perhaps, Consolidated has a larger number of units than they should have for their capital, if Arrow be taken as the correct base, but we cannot avoid the point that all the companies collectively have \$5,500,000 of fixed assets, which are \$1,500,000 in excess of their liquid current assets.

Mr. WIPRUD. Now, Mr. Examiner, I think the witness should answer the question. I asked him to state what companies involved in the proposed merger have so pyramided their investment in equipment as the witness has testified.

A. Well, in my opinion, all companies have pyramided their capital, with the exception of Arrow Carrier.

Mr. Examiner, I will have to take about an hour to calculate the current position of each company, in order to answer that question.

Mr. WIPRUD. Mr. Examiner—

Mr. SULLIVAN. We can have it done and have him come back some time later in the day, if Mr. Wiprud wants it.

Exam. BAKER. What is meant by "pyramiding" capital?

1058 The WITNESS. By "pyramiding" capital, I mean this, Mr. Examiner, that the company employs its capital several times, over and over again, in the purchase of equipment or other fixed assets.

To illustrate, I mean this: I may have \$100,000, which may be a fair amount of money, to buy a \$200,000 building, to give me a fairly good position. Instead of buying one building I buy four buildings, \$200,000 each, and invest \$25,000 in each one. That is a pyramiding of capital in the real estate business.

In the trucking business, I think all capital should be employed; that is, all equipment should be purchased out of the company's capital rather than out of current obligations, which have to be met monthly. The obligations cannot be paid with these trucks; they must be paid with cash or accounts receivable.

Exam. BAKER. Do you feel an answer to your question is important enough to take up the time that Mr. Reicher indicated would be necessary?

Mr. WIPRUD. Mr. Examiner, this witness has stated a conclusion, among other conclusions that he gave, with regard to the financial aspect of these companies. I just want to know on what he bases his conclusion. Obviously, in his answer, he has not indicated that. It is merely the general opinion, without being supported by any supporting data.

1059 Exam. BAKER. His statement is supported by the aggregate figures.

Mr. WIPRUD. Well, his statement—

Exam. BAKER. I wonder what your particular interest is from the standpoint of working capital. His testimony is directed, in connection with that statement, to the need of additional working capital and the need of selling preferred stock to the public. Are you, as an intervenor, interested particularly in that phase of this transaction?

Mr. WIPRUD. Perhaps I can inquire further from the witness, and I may develop how that may have some bearing on the subject.

By Mr. WIPRUD:

Q. Mr. Reicher, did you hear Mr. Horton testify that a portion of the proceeds of this preferred stock issue of \$1,500,000, which is to be sold, presumably, to the public, was to be used for the purchase of equipment?

A. I did not.

Q. I will state, then, that Mr. Horton so testified, and it appears at page 44 of the transcript of this proceeding.

Now, how do you reconcile that with your testimony that these companies have overpurchased equipment?

A. I still maintain the same position, that if the company intends to buy much more equipment, it will probably need more than \$1,500,000 for working capital.

Q. You think the issuance of preferred stock is a sound 1060 basis upon which to raise that capital?

A. I think the company should raise capital for the purchase of equipment through the sale of common stock, preferred stock, or long-term bonds—some such basis, but not to purchase equipment where they have to pay for it within 30 days, 60 days, or 90 days. I think that is unsound.

Q. My question was limited to preferred stock. Do you think that is a good way to raise the money for that purpose?

A. I think preferred stock is, perhaps, the best way.

Q. In your Exhibit No. 12, I believe you show that the net proceeds from the sale of this preferred stock issue would be an amount of \$1,410,000, which would indicate that the cost of the financing would be about 6 percent. Am I correct, sir?

A. I said that \$1,410,000 was the net figure of \$1,500,000 raised in connection with the bond issue, less the cost of securing that money and less any expenses in connection with this organization. I believe you will find that is my testimony.

Q. Well, assuming that it would cost something to sell this bond issue to the public, that would be an amount in addition to the amount of interest that would have to be paid on the preferred stock; is that not right?

A. I think you are entirely right about that.

Q. And then to the extent that there will be a charge or there would be a commission for the sale of the preferred stock, 1061 that would represent the cost for the first year of financing the equipment through the issuance of preferred stock.

A. Not necessarily. That kind of cost, whatever the cost may be for, is something that may be amortized over a long number of years.

Q. I understand, but the charge is still there, is it not? It would be the amount—

A. Not to be written off.

Q. Let me finish the question.

A. I am sorry.

Q. It would be a dividend rate of 6 percent on the preferred stock account plus whatever it costs to finance the sale of that stock?

A. I do not want to get my answer confused. I wish you would repeat that question. It is in part two parts. Then, perhaps, I will be able to answer it.

Q. I will reframe it, so that you will be able to understand it.

A. Thank you.

Q. In the event that the financing of this equipment is to be done through the issuance of preferred stock, the charge that would be made or the commission paid for the issuance of the preferred stock would be an amount which would have to be paid in addition to the dividend on that stock?

A. That is correct.

1062. Q. And that would be the measure of cost of financing the equipment in so far as the proceeds of that sale are concerned?

A. That is not entirely correct, because that money can be used indefinitely for financing equipment purchases. In other words, your dividend charge is a charge of 6 percent per annum, whereas the charge for acquiring this money may be prorated over the next 50 years.

Q. What is the life of the equipment?

A. The life of the equipment may be four or five or six or seven or eight or nine years.

Q. The raising of funds through the preferred stock would be a continuing operation of the company, would it not?

A. Yes, indeed.

Q. Now, is not that charge of 6 percent going to be in excess of what the banks would charge for financing two- or three-year loans for this purpose?

A. That largely depends on the company making the loan. I have known cases where companies have borrowed money for three or four percent, and I have known other cases where they have paid eleven, twelve, and as high as eighteen percent, and I know that in most cases banks are reluctant to make loans of this kind. The loan must be secured. It must be made through a finance company, as a rule.

Q. Do you think Associated Transport would have to pay 18 percent for this money?

A. I don't think so, sir.

Q. Do you think it would have to pay in excess of 6 percent?

A. I have no idea what the money market may be when they are ready to raise it, but I do feel that they would be in a much sounder position having that money in its capital, rather than loans which have a definite maturity date and must be paid back; as compared with the preferred stock, I don't think there is any comparison.

Q. Will you answer my question now, Mr. Witness?

A. I thought I did, sir.

Q. Would the Associated Transport have to pay less than 6 percent?

A. I have not the slightest idea what the money market will be and what the charge will be.

Q. Mr. Reicher, in your Exhibit No. 12, you have divided your figures, in most of the things that are pertinent thereto, between carrier and noncarrier companies. Is it your understanding that the noncarrier companies can be merged into the Associated Transport, if this merger is approved?

A. I really don't know what the intention of the board of directors is with respect to the merger of these companies. Consequently, I am at a loss to explain that.

Q. Well, whether the noncarrier companies are merged into the merging company, or whether they become wholly owned  
1064 subsidiaries of that company, the net profit of those companies, in so far as that net profit now goes to individuals rather than to an operating company, would accrue to the Associated Transport, would it not?

A. That is correct.

Q. Have you reflected that situation in Exhibit No. 12?

A. I have, sir.

Q. Will you state where it is shown?

A. When you say "Exhibit No. 12," I wonder whether you are referring to the correct exhibit. Do you mean 12, sir?

Q. Exhibit 12.

A. Page 8 of Exhibit 12 shows the operations of the carrier and noncarrier companies combined.

Q. Will you point out the item on that page which reflects that increased income to the operating company?

A. \$184,917.19.

Q. And that item, as I understand it now, includes the net profit of such companies as Brown Equipment Company, Conger Realty, Division Tire & Sales and United Sales?

A. That is not correct, sir.

Q. What does it represent?

A. It represents Brown—page 7 of the exhibit shows the companies included in that figure. It shows Southern New England Terminals, Brown Equipment & Manufacturing Company, Conger Realty Company, and Barnwell Warehouse & Brokerage Company,

1065 Q. Do you consider that all of the individual companies here are in need of additional working capital?

A. You are referring to the noncarrier companies?

Q. Noncarrier companies.

A. I have made a study of the consolidated picture, but not of the individual companies, as I previously indicated, and consequently cannot answer your question.

Q. Then, do I understand, Mr. Reicher, that your audit is based upon the contract and not upon an audit of the individual companies?

A. The contract provides for an audit of the individual companies. Consequently, we examined the individual companies, and then made a study of the collective company in consolidated form.

Q. Will you refer to Exhibit 12 again and explain to the Commission, in the light of your statement and also of your testimony yesterday, in regard to checking and cross-checking all of these items, the meaning of the note which appears at a number of the pages, almost all of the pages in the exhibit, and I refer you to page 7, which reads as follows:

"NOTE.—The figures in this statement indicated 'per books' are stated as they appear in the company's books, without verification by us."

A. Yes, sir.

Q. Now, will you tell us what that means?

1066 A. It means that the figures in the columns headed "Per Books" are stated exactly as they appear in the books, without any adjustment by us. Alongside of that column, we have another column headed "Adjusted." Those figures are the adjusted figures after examination by us. The intention was to show the figures before examination and after examination.

Q. Do you want the Commission to understand that the word "verification" here means "adjustment"?

A. That is correct, sir.

Q. In other words, you have audited the books of the individual companies; is that correct?

A. That is correct, sir.

Mr. WIPRUD. That is all.

Exam. BAKER. Is there any further examination of this witness?

Mr. SULLIVAN. Just one question, in view of Mr. Wiprud's question.

By Mr. SULLIVAN:

Q. Any allowance made to the bank, Mr. Reicher, for the purpose of purchasing equipment, first, would it have to be paid off in a relatively short time, less than the life of the equipment?

Mr. WIPRUD. Just a minute. This witness testified that he has no accurate knowledge of what the banks would do.

Exam. BAKER. He is not asking him about the expiration.

Mr. WIPRUD. I would like to hear the question. I did not hear it.

Exam. BAKER. Will you read the question?  
(Question read.)

Mr. WIPRUD. I have an objection to the question, because he has testified that he does not know anything about bank loans.

The WITNESS. I did not say—

Exam BAKER. Objection overruled. He may answer.

A. In my experience, I have rarely, if ever, run across a bank loan on equipment which extended over the life of the equipment; or, otherwise stated, it was five, six, seven, or eight years, as previously indicated in my testimony.

By Mr. SULLIVAN:

Q. What would be the effect of borrowing money from a bank; I mean, with respect to increasing the interest thereon, with respect to increasing or decreasing the earnings in a year?

Mr. WIPRUD: Now, Mr. Examiner, that goes to the very point. I asked this witness if he knew what the interest would be that would have to be paid, and this question goes to the interest that would have to be paid, that would increase or decrease earnings.

Mr. SULLIVAN. "X" percentage, Mr. Examiner. I am not talking about interest.

Mr. WIPRUD. Well, if he does not know what the interest would be that would have to be paid, how can he answer the 1068 question?

Exam. BAKER. I do not see that the answer would mean much in the record.

Don't you want to withdraw your question? It is obvious—

Mr. SULLIVAN. I was next going to indicate, or what I was driving at was that the interest on preferred stock does not go to increase or decrease earnings.

Exam. BAKER. That is obvious. I do not think any testimony is necessary on that.

Mr. SULLIVAN. All right. That is the only question I had.

Exam. BAKER. I have a few questions.

The WITNESS. All right, sir.

Exam. BAKER. Were all of the adjustments that you made in the amounts of the accounts of these respective carriers made in accordance with the terms of the contract?

The WITNESS. Yes, sir.

Exam. BAKER. No exceptions to that?

The WITNESS. No, sir.

Exam. BAKER. Are there any appeals pending in connection with adjustments made by you? I understand the contract made provision for an appeal from any adjustment made by you to the board of designees. Are any such appeals pending?

The WITNESS. I really do not know, sir. I believe that all of the companies have agreed, either in writing or orally, that the adjustments are satisfactory to them.

**Exam. BAKER.** Is it your understanding, then, that the figures contained in Exhibit 12 are the final figures upon which the transactions will be consummated, if approved?

**The WITNESS.** That is correct, sir.

**Exam. BAKER.** In your examination of the books of any of these companies, did you discover that any write-ups in value of assets had taken place in the last—well, during the period in which you examined the books?

**The WITNESS.** The nearest we came to that, sir, was where rebuilding may have been capitalized. Other than that, we found nothing of that description.

**Exam. BAKER.** The exhibits attached to the application, and also Exhibit 12, show certain income statements of Arrow Carrier Corporation. It is my understanding that the operating company at this time is the Transport Company, which has leased the operating rights and property of Arrow. It is not true that the income statements actually depict the operations of the Transport Company during the period of the lease?

**The WITNESS.** That is correct, sir.

**Exam. BAKER.** Do such statements reflect any rental payments under the lease?

**The WITNESS.** No; they do not.

**Exam. BAKER.** Referring to Exhibit No. 12, sheet 2, in the last column of that sheet, it shows under "Notes Payable,"  
1070 \$290,219, total.

**The WITNESS.** Yes, sir.

**Exam. BAKER.** Are all of those short-term notes?

**The WITNESS.** Yes; they are, sir.

**Exam. BAKER.** The exhibit also shows certain equipment and other long-term obligations. Do you know whether any of those items are represented by securities, notes, or otherwise?

**The WITNESS.** Well, the equipment obligations are all secured with conditional sales contracts, and they are broken down into amounts due in one year and amounts due after one year.

**Exam. BAKER.** Can you state as to the other long-term obligations as to whether there are any notes included in them?

**The WITNESS.** Those obligations are similar to the equipment obligations—oh, I am sorry—those obligations are essentially mortgages on buildings.

**Exam. BAKER.** Do they usually consist of a note as security for the mortgage, could you state?

**The WITNESS.** Not usually. Usually it is just a bond and mortgage company, and there is no note accompanying it.

**Exam. BAKER.** A bond in some instances.

**The WITNESS.** Yes, sir.

Exam. BAKER. Can you state definitely whether there are any notes included in those?

1071 The WITNESS. I can give you that in a very few moments. I am under the impression that there may be a note in connection with the Barnwell Warehouse situation, but I am not too sure. Perhaps in 15 or 20 minutes I could give you that information.

Exam. BAKER. What I had in mind—and I am addressing this to counsel—under section 214, in the event of a merger of these companies, a consolidation or merger, the carrier or noncarrier companies, the applicant would necessarily assume an obligation with respect to the securities to those companies. Was it intended that the application in MF-1613 seek authority from the Commission for the assumption of obligations—

Mr. SULLIVAN. It was our contemplation with respect to that matter, that we felt that at much more appropriate time we would make an appropriate application for such authority; that is, assuming approval was granted in this application, that before any assumption was made on the part of the Transport Company, or before physical merger or consolidation were carried out, an appropriate application should be made to the Commission for authority for the Associated Transport Company to assume those obligations.

Exam. BAKER. Very well.

Referring to sheet 10 of Exhibit 12, the column headed "(Decrease) Adjustments (Including Eliminations)," includes  
1072 an aggregate amount under each account. For instance, under cash it shows an adjustment of \$10,182.53. Is there any way by which, from the data contained in this exhibit, you can determine the amount applicable to each of the companies under each account?

The WITNESS. Yes, sir. By comparing the balance sheet appearing on pages 1 and 2 of the balance sheet and appearing on pages 10 and 11, and to illustrate, take the case of McCarthy—that is the first one, showing a difference—McCarthy Freight System, Inc., it shows \$59,239.18 as cash in our adjusted balance sheet, and the books show \$55,164.81. There is a difference there of \$4,000. In other words, on Moran, it shows \$83,288.79 on April 30th, as compared with \$79,602.60, and those differences all of the way through will comprise the difference of \$10,182.53.

Exam. BAKER. Thank you.

Now, refer to sheet 11.

The WITNESS. Yes, sir.

Exam. BAKER. The column shown in applicant's balance sheet as of June 30, 1941, shows common stock of \$60,202. The present figure would be different from that, would it not?

The WITNESS. Yes.

Exam. BAKER. Would it be \$71,480?

The WITNESS. That is correct, sir.

1073 Exam. BAKER. Do you know whether the 71,480 shares of common has actually been issued as of this date?

The WITNESS. I believe it has. I am not in a position to say.

Mr. SULLIVAN. I think it has been issued—that original stock of Associated Transport, you mean?

The WITNESS. Yes.

Mr. SULLIVAN. It has been issued. I do not know whether everybody has received it, but it has been issued.

Exam. BAKER. I am addressing this to counsel: In any event, it will have been issued prior to the consummation of the proposed transaction?

Mr. SULLIVAN. That is true. I am certain it has already been issued. I am only uncertain as to whether each stockholder has actual physical possession of it in his hands yet. I know it has been issued.

Exam. BAKER. In connection with that sheet 12 of the exhibit, under "common stock: Proposed issue," it shows 720,123 shares. Actually, is it not true that authority is sought in this proceeding to issue only 648,643 shares? I am directing that to counsel.

Mr. SULLIVAN. I think that is so.

Exam. BAKER. You are not seeking authority to issue shares incident to the Transport Company for the data purchased from them; are you?

1074 Mr. SULLIVAN. No, sir.

Exam. BAKER. You are not seeking authority here to issue shares to original subscribers.

Mr. SULLIVAN. That is right. Off the record.

Exam. BAKER. Yes.

(Discussion off the record.)

Exam. BAKER. Now, Mr. Reicher, do you know the basis upon which the preferred stock can be converted? That is in the record, I believe, but so we will have a reference to it at this time.

The WITNESS. It is on the basis of \$25 per share of common for the first 3 years, \$30 a share of common for the next 3 years, \$35 per share of common for the last 4 years.

Exam. BAKER. In other words, the maximum rate will be four shares of common for one share of preferred; would it not?

The WITNESS. That is correct, sir.

Exam. BAKER. On that basis, what is the maximum number of shares of common stock which would be required to convert all of the proposed stock—proposed to be issued?

The WITNESS. If I may inquire, do you include the \$1,500,000 application?

Exam. BAKER. All preferred stock.

The WITNESS. 211,768 shares of common would be required.

1075 Mr. SULLIVAN. How many?

The WITNESS. 211,768.

Exam. BAKER. Mr. Sullivan, pursuant to our discussion yesterday, it would seem that if you add 211,768 shares to the 648,643 shares, it will be required to issue 860,411 shares of common stock, and if you propose to amend the application I suggest you keep those figures in mind.

Mr. SULLIVAN. I just did not catch the last figure.

The WITNESS. 860,411.

Exam. BAKER. Referring to sheet 14—

Mr. FAGG. Mr. Examiner, would that be dollar value?

The WITNESS. Par value would be the dollar value.

Mr. FAGG. One dollar value.

The WITNESS. Yes, sir.

Exam. BAKER. Sheet 14 is the pro forma balance sheet, which is, in effect, the acquisition of control of these companies, as I understand.

The WITNESS. That is correct.

Exam. BAKER. In that case, should not the amount carried under investments on the asset side correspond to the par value of the stock exchanged by applicant for the stock of the particular companies, instead of showing the net worth of those companies?

The WITNESS. I do not think so, Mr. Examiner. These figures show the investment that Associated will have in the  
1076 respective companies and the stock which it be own  
will only be indicative of that investment.

Exam. BAKER. In any event, that is a matter which we will have to decide in case the application is approved, and the journal entries will be subject to approval, of course.

The WITNESS. That is correct.

Exam. BAKER. The footnote on sheet 23 indicates that United Arbour Express discontinued operations on March 31, 1941. Do you know that it has actually discontinued operations?

The WITNESS. There has been no transaction on their books after that date. To that extent we know that they have discontinued operations.

Exam. BAKER. Mr. Arbour, can you answer from where you are? Has United Arbour discontinued operations?

Mr. ARBOUR. They have.

Exam. BAKER. It is not operating at the present time?

Mr. ARBOUR. No.

Exam. BAKER. Is there any intention to resume operations?

Mr. ARBOUR. There is none.

Exam. BAKER. Mr. Arbour has been previously sworn in this case.

Referring now to Exhibit 13, and particularly to the fourth line, which is entitled "Treasury Stock or Stock Not  
1077 Acquired," does the item shown under Consolidated Motor Lines of \$36,000 represent the amount expended by Consolidated for the purchase of 90 shares of its stock, as provided for in Schedule J of the contract?

The WITNESS. It shows the part of the purchase price by Consolidated which is chargeable to surplus, and the remaining \$9,000, I believe the figure is, was charged against capital or treasury stock. I am sorry, sir. I wish to correct. May I inquire—

Exam. BAKER. Off the record.

(Discussion off the record.)

Exam. BAKER. On the record now:

The WITNESS. The \$36,000 was the total price paid for the acquisition of those 90 shares.

Exam. BAKER. That was 90 shares at \$400 a share?

The WITNESS. That is correct, sir.

Exam. BAKER. Under Horton Lines is shown an item of \$58,840. Does that represent the employees' preferred stock?

The WITNESS. Yes, sir.

Exam. BAKER. Under Arrow Carrier Corporation, does the amount shown represent the call price of preferred stock not being acquired by applicant?

The WITNESS. That is correct. That is, \$26,000 the stock plus \$1,300 for the premium.

1078. Exam. BAKER. Were there any accrued dividends on that stock as of April 30, 1941?

The WITNESS. I don't believe so. I think there were not.

Exam. BAKER. I previously stated that a deduction was made from Arrow Carrier Corporation's net worth, representing an amount to be paid to Mr. Hamilton for cancellation of an employment contract.

The WITNESS. That is correct, sir.

Exam. BAKER. Where is that deduction made on that Exhibit No. 13?

The WITNESS. Under Item No. 15.

Exam. BAKER. Under the column entitled "Adjustments to Surplus"?

The WITNESS. That is correct. It has brackets, and therefore it is a deduction.

Exam. BAKER. What do the letters w/o on the exhibit signify?

The WITNESS. That would be a write-off—written off; like in the case of item No. 20, deferred expense. The deferred expense is written off in the amount of \$92,370, as in the case of Arrow.

Exam. BAKER. Those are all of the questions I have of this witness.

Mr. SULLIVAN. I offer Exhibits 12 and 13 in evidence. I renew my offer.

1079 Exam. BAKER. Exhibits 12 and 13 will be received in evidence.

(Exhibits Nos. 12 and 13, Witness Reicher, received in evidence.)

Exam. BAKER. The witness is excused.

The WITNESS. Thank you.

(Witness excused.)

Mr. BURNETTE. Mr. Examiner, may I inquire at this time whether there will be a hearing on Monday, or are you going to conclude today?

Exam. BAKER. No; I am certain the hearing will be continued to Monday.

Mr. BURNETTE. I am going home, and will be here Monday, if the hearing is to be continued until then; but I just wanted to find out, to be sure, before I left.

Mr. COCHRAN. Mr. Examiner, I would like to recall the witness Lawson—Mr. J. D. Lawson.

J. D. LAWSON, was recalled and testified further as follows:

Direct examination by Mr. COCHRAN:

Q. Mr. Lawson, you have been previously sworn in this case?

A. Yes, sir; I have.

Q. I believe your testimony was directed especially to Applicant's Exhibit No. 2, in your previous testimony; is that  
1080 correct?

A. That is correct.

Q. What was Exhibit No. 2?

A. Exhibit No. 2 was a list of actual motor carrier operations conducted in competition with certain carriers forming a part of Associated Transport, Inc., organization.

Q. That exhibit purports to show all the carriers in competition with the carriers named in the application here?

A. Oh, no, sir. That exhibit only went to the extent of the duplicated operations insofar as the so-called East-South carriers; or, more specifically, Barnwell, Horton, Transportation, and in part Southeastern Lines, were concerned.

Q. You have before you there a document, the first page of which has the following in typing:

"Motor common carriers serving, authorized or claiming authority to serve certain representative and principal areas served by certain motor common carriers composing a part of Associated Transport, Inc."

A. I have.

Q. Did you prepare that document, or was it prepared by you in collaboration with others working under your supervision?

A. Both; yes, sir.

Exam. BAKER. Do you desire this to be marked for identification, Mr. Cochran?

Mr. COCHRAN. Yes; I would like to have this marked for identification.

1081 Exam. BAKER. The document described will be marked for identification as Applicant's Exhibit No. 16.

(Exhibit No. 16, Witness Lawson, marked for identification.)

By Mr. COCHRAN:

Q. Mr. Lawson, this Exhibit No. 16, marked for identification, contains three pages representing charts, perpendicular lines, the names of certain towns, and so forth, and following that there are six pages containing a list of motor carriers, numerically listed, and the last page is an explanation of the legend on your charts; is that correct?

A. That is correct.

Q. Taking the first page of this document, beginning at the left, the perpendicular column, headed "New England," "New York," "Philadelphia," and other points listed, will you please explain that column, as well as the other lines and figures and legends contained on that page?

A. I will begin by saying that this is a chart of the actual operations conducted by the carriers set forth, and this page includes the carriers that were set forth on Exhibit No. 2. The purpose of that was to bring the entire picture of competition forward in one exhibit and to make one or two minor corrections in the previous exhibit,

The chart shows carriers actually in operation and transporting general commodities, with the usual exceptions, and such carriers are reflected by the perpendicular lines. The

1082 principal points or areas are shown in the lefthand column.

Those points were selected as the principal ones along the route of Horton, Barnwell, and Transportation, Inc., between New York and Atlanta, Ga.

An explanation of the chart would be that the first perpendicular line, for example, numbered 1, encircled, is an operation between New England and points in the South, Atlanta and beyond. This carrier is the Akers Motor Lines, Inc., and by

referring to page 1 of the attached list of carriers, the figure 1 reflects such information, that is, the encircled figure 1 is shown to be the Akers Motor Lines, Inc.

Q. Is it a fact that wherever those encircled figures are used it is for the purpose of indicating the name of the carrier which appears on your numerical list of names?

A. That is correct; yes, sir.

Q. I believe you also have opposite the names the docket number of their application.

A. Yes, sir; I have. That is the Interstate Commerce Commission's Docket No. 5.

Q. What does the "X" marked on these lines indicate?

A. The same as in Exhibit No. 2. They indicate the carrier's authority to operate into these points opposite which those marks appear, but it is not known to me that they render service at such points. In some instances I personally have seen equipment of certain of these carriers at points so designated.  
1083 but I do not know that they are conducting a service at such points.

Q. Do you know of your own knowledge if the carriers indicated on the first sheet of this document actually operate between the areas represented on this chart, with the exception of those points marked with the letter "X"?

A. Yes, sir; with one or two corrections that I observe to be necessary, which were omitted when this chart was made. For example, perpendicular line 11 should have an "X" opposite Richmond, Va. Apparently, it was omitted when they drew the chart.

Q. Are there any other corrections on that page?

A. Line 7, the legend having the "X's" opposite Charlotte and Greenville would indicate that such authority has been confirmed to that carrier by the Commission, and this should be corrected to the extent of showing that that carrier does not now possess a certificate. It does not yet possess a certificate, but its operating claim is pending before the Commission. Therefore, the reference for the letter "X" is, in each of those three places for that particular carrier, that it does not indicate that they have a certificate but, rather that the claimed authority is pending before the Commission.

Q. You will note that as to these particular lines on this page four of them extend from New York into New England. You have not made any attempt to show what areas in New  
1084 England are served by those carriers; have you?

A. No, sir; because I had prepared this chart to show competition in connection with Horton, Barnwell, and Transportation. The continuation of those lines beyond New York into

New England and beyond Atlanta into the Deep South was only to indicate that they do operate beyond the terminal points of New York and Atlanta.

Q. Can you indicate that the distance in miles between the points you have in a column on the left hand side of this document?

A. I think I can. From New York to Philadelphia it is approximately 90 miles; from Philadelphia to Baltimore it is about 100 miles; from Baltimore to Richmond it is 150 miles; Richmond to Greensboro it is 220 miles; Greensboro to Charlotte is 100 miles; from Charlotte to Greenville it is 110 miles; Greenville to Atlanta it is 165 or 8 miles by highway.

Q. Is it a fact that the carrier indicated as No. 1, operating from New England to Atlanta and beyond, also serves the intermediate points other than those indicated?

A. Oh, yes, sir. Its main office is in Gastonia, N. C., which is 16 miles west of Charlotte, and is a very important point.

Q. Is that true of all the carriers to the extent as shown on this map?

A. Well, I might say—

1085 Q. Except as otherwise noted.

A. Yes; I might say generally. I cannot say that I know they serve all intermediate points.

Q. No; I said generally.

A. Generally, yes; that is true.

Q. The second page of this document?

A. The second page reflects again additional carriers of general commodities who are authorized by virtue of certificates, compliance orders, or pending applications before the Commission, to serve these points, but about the actual operations I know little, although I know that some of these carriers operate to—

Q. The information you received in making this was from the Commission's files.

A. Yes, sir.

Q. And this document to the extent shown by the particular lines reflects the operations of the carriers in accordance with the files of the Commission.

A. That is true.

Q. And to that extent are in competition with the carriers you first named.

Mr. MACDONALD. Mr. Examiner, I wonder if that—

Mr. COCHRAN. Strike that question out.

By Mr. COCHRAN:

Q. I believe you stated that you do not know of your own personal knowledge that the carriers on page 2 are  
1086 actually operating from the points indicated.

A. I will state it this way: I do not know all of the points that they are serving, but I do know some of these points that they operate in and out of, and I am not sufficiently familiar with their operations to justify me to put them on page 1. I more or less considered them as potential competitors. They are actual, however, in certain respects, of which I am personal knowledge, but I don't know—

Q. The point I am trying to get at is, where did you get the information—

A. The information that—

Q. Wait a minute. Where did you get the information from which you started to put these on this map?

A. The information comes from the Interstate Commerce Commission files of these carriers' applications for authority to operate.

Q. And those files show that they either have the right, or the rights are pending, or there have been some orders issued with respect to that matter; is that correct?

A. That is correct.

Q. Will you please explain the perpendicular line No. 62? There is a variation there. Will you explain what that means? There are two of them, I believe, on that page, 62 and 68.

A. Line 62 is the Hitchcock Motor Express of Hartford, Conn.

Line 68 is the North-South Freightways, Inc., I believe, of 1087 Hoboken, N. J.

Q. What do the semicircles represent opposite Baltimore and Philadelphia?

A. They indicate the carrier is without authority to serve those points with respect to general commodities. In other words, on line 62, that operator has pending an application before the Commission, under which it received a compliance order granting authority to transport commodities from Hartford to Atlanta, Ga. It also has in the same order specific commodity authorities relevant to some of these intermediate points, but this was confined to general commodities; so I did not show any operation to or from those points with respect to specific commodities.

The same is true of carrier 68. That is the North-South Freightways. It has an application pending before the Commission, and I have seen some of its documents, showing operation from the New York territory to eastern Pennsylvania and some Connecticut territory to Alabama and Mississippi, but it is more or less a through operator.

Q. Do you know whether or not carrier 68 serves any of the intermediate points between Baltimore and Atlanta, and when I

speak of "intermediate points" I mean other than those points listed in column 11 on the lefthand side?

A. No; I don't think it has.

Q. Turn to the chart on page 3 and explain in detail the 1088 purport of that chart.

A. Here, again, are listed carriers, both potential and actual carriers, serving points under authority from the Commission or by virtue of application pending before the Commission, in connection with specific commodities, and on that page there should be stricken from it line 246, which appears to be a duplication.

Q. And the corresponding figure should be stricken from your numerical list; is that right?

A. At page 6; that is correct. I might say that apparently that is a duplication of line 140. So we may not overlook it, on page 1, line 20 should be stricken. It is a duplication of line 19. Those two errors occurred in the preparation of the chart.

Q. I believe you stated that the carriers listed are represented by the perpendicular lines on page 3 of this chart and are limited in their rights to specific commodities; is that correct?

A. Yes, sir.

Q. Did you secure the information upon which you based that statement from the files of the Interstate Commerce Commission?

A. Yes, sir. That is substantially correct. Line 190, for example, is Kelly Motor Lines of Sumpter, S. C. They have applications pending before the Commission, and it is rather difficult to determine exactly what their rating authority is; 1089 that is, in the short space of time that we had to work up some of this information, but I show that carrier as a specific commodity carrier rather than giving it the benefit of any former operating authority it might have under the variety of applications pending.

I might say, too, that this page does not reflect operations known in detail to me. I know about some of the carriers, but this reflects the operating authority as it stands on the Commission's files, to the best of my knowledge.

Q. What do you mean by restricted to specific commodities?

A. Authority granted by the Commission to transport certain commodities or to serve certain points or areas.

Q. The transportation of the specific commodities you refer to by these companies is to the extent authorized in competition with carriers named in this application; is it not?

A. Oh, yes. Some of them, I think. I have confined this, as I said before, to Horton, Barnwell, and Transportation, and more or less East-South operators, but I did not make any investigation—

Q. But to the extent of the authority they have in the shipments that they make—

Mr. MACDONALD. May we have the question read?

Exam. BAKER. Finish the question.

Mr. COCHRAN. Strike it from the record.

By Mr. COCHRAN:

1090 Q. Mr. Lawson, to the extent of operations of these companies shown on page 3, carrying specific commodities between certain points limited by the Commission, to that extent they are competitive with Horton, Barnwell, and Transportation.

A. Yes, sir.

Q. If the restrictions were limited entirely—

Mr. MACDONALD. Mr. Examiner, I do not think this—

Mr. COCHRAN. I will withdraw that.

By Mr. COCHRAN:

Q. Has there been any pending litigation with reference to the restrictions on some of these companies?

A. Carrier No. 2 has litigation pending. I think that it has now proceeded to the Supreme Court; I believe it is in the Supreme Court now—asking for relief from the Commission's order restricting it to specific commodities or specific areas, and seeking a requirement of the Commission that it be granted authority to transport these commodities within the territory embraced in the original claim.

Q. Was the position of this carrier sustained by the District Court of the Western District of North Carolina?

A. Yes, sir; by the three-judge court there. As to carrier No. 3 and carrier No. 4, on page 1; I believe I am correct in saying that both of them, at least one of them, is involved in a similar case.

Q. In the numerical list of names, you have a total of 291 carriers.

1091 A. With the two eliminations, it brings it to 289.

Q. The word "certificate" on the righthand side of this numerical list of names, does it vary in its significance?

A. That was merely a note made for convenient reference of those of us who prepared the index of the carriers, and should not have been carried forward.

Q. So far as this exhibit is concerned, then, it has no special bearing; is that correct?

A. That is correct.

**Q.** Does this document, marked for identification as Exhibit No. 16, contain a full list of all of the motor carriers operating between the areas represented on the lefthand side of the exhibit, namely, New England to Atlanta?

**A.** Well, as to the actual operations known to me, it does, but there are others that I know have claims for authority pending before this Commission, and I was not able to develop all the data as to all those applications. There are some hundred thousand docket files in the Commission's file, many of them of the carriers that we were searching for additional information on, and which we could not obtain.

**Q.** Have you, in preparing this document, found the names of additional carriers operating in that area?

**A.** Yes, sir.

**Q.** Will you read those for the record?

**A.** I have about forty additional ones.

1092 **Commission Docket M-48419, Modrac Transportation Company, Baltimore, Md.—**

**Mr. Fagg.** Mr. Examiner, could not this be covered by an exhibit?

**Mr. Cochran.** It should be in this exhibit, but we just did not have time to get it in.

**Examiner Baker.** Apparently, the exhibit is not available now. He may read it. Abbreviate it as much as you can.

**The Witness.** Yes, sir.

**Mr. MacDonald.** Mr. Examiner, may I suggest that probably we will go over the lunch hour, and if this witness would care to have it typed up this afternoon it would be convenient, and then there would be no objection to reading it into the record.

**Examiner Baker.** Can you do that?

**The Witness.** No, sir. I could not type this information; I have no idea where I could get it typed on Saturday afternoon.

**Mr. MacDonald.** May I ask whether there will be any indication of the routes of these carriers as shown?

**The Witness.** It is my intention to give you the information to coincide with these charts.

**Mr. MacDonald.** We have not had any objection, but there may be some objection on this exhibit. This is something going into the record before objections are heard on the—

1093 **Exam. Baker.** Do you object to this?

**Mr. McDonald.** I object to this exhibit; yes.

**Exam. Baker.** I mean to the oral testimony.

**Mr. McDonald.** I object to its going in ahead of the exhibit; yes.

**Exam. Baker.** Objection overruled.

The WITNESS. Docket MC-48419, Modrac Transportation Company of Baltimore, Md., received a certificate from the Interstate Commerce Commission on May 26, 1941.

Mr. Fagg. Mr. Examiner, may I interrupt the witness? As to these 40 additional carriers that you are reading into the record, are they all common carriers and so ruled by the Interstate Commerce Commission?

The WITNESS. Yes, sir. I gave no consideration to any other type of operator.

By Mr. COCHRAN:

Q. Will you read the names of those carriers and the names between which they operate? It will not be necessary to give any further detail.

A. I have transcribed from the Commission's files here information pertaining to the authorized operations to coincide with the points in the areas shown in the lefthand column of my exhibit. I cannot go any further than that without referring again to the Commission's records. The carrier named received authority to transport general commodities. The authority in part is between Baltimore and Philadelphia.

1094 Exam. BAKER. Suppose we recess for lunch now until 2 p. m.

I would like to ask you to give consideration to the question as to whether you feel it is important to read into the record the additional carriers, in view of the numerous carriers you have listed in the exhibit.

We will now recess until 2 p. m.

(Whereupon, at 12:40 o'clock p. m., a recess was taken until 2 o'clock p. m. of the same day.)

1095

AFTERNOON SESSION—2 P. M.

Exam. BAKER. Let us resume.

Mr. COCHRAN. All right, Mr. Lawson.

J. D. LAWSON, resumed the stand and testified further as follows:

DIRECT EXAMINATION (continued)

Mr. COCHRAN. Mr. Examiner, when we adjourned the witness was on the point of reading into the record the names of certain other carriers not listed on this exhibit. I had suggested that he read the names of those carriers and the points between which they

operate, as quickly as he can read them. May he be permitted to do so?

Exam. BAKER. Yes.

By Mr. COCHRAN:

Q. All right. Proceed, Mr. Lawson.

A. Mushroom Transportation Company, Inc., general commodities between Baltimore and Philadelphia, and certain specific commodities; Perawel Trucking Company, Inc., Trenton, N. J., general commodities between New York and Philadelphia; Shipley's Transfer, of Fredericksburg, Md., specific commodities from New York to Baltimore, Baltimore to Philadelphia, New York, and Richmond.

Warlick Trucking Company, Kings Mountain, N. C. This carrier has an application for the Eastern Seaboard pending. It extends from Georgia to New York, including intermediate States and the District; C. O. Lovett, general commodities, Charlotte, Greensboro, Burlington, Richmond, Wilmington, Philadelphia, New York City; T. E. Rea, Charlotte, N. C., Greensboro, and Greenville; W. T. Cowan, Inc., Baltimore, Md., general commodities, New York, Philadelphia, Baltimore, and Alexandria, including Washington; Wooleyhan Transport Company, Wilmington, Del., general commodities, New York, Philadelphia, and Baltimore.

The Jersey Coast Transfer Company, Inc., Asbury Park, N. J., general commodities, New York and Philadelphia; James A. Stephenson Company, Long Island City, N. Y., special commodities between the New York zone, on the one hand, and Massachusetts, Connecticut, Rhode Island, New Jersey, part of Pennsylvania, and New York, Wilmington, Baltimore, and the District on the other; Headly's Express & Storage Company, Inc., of Chester, Pa., general commodities between New York and Philadelphia; Morris Farber, Philadelphia, Pa., specific commodities from Philadelphia to New Haven, Wilmington, Baltimore, Richmond, New York; Kessler Trucking Company, of Paterson, N. J., specific commodities between points in New Jersey, New York, New England and points in the States southward as far as Georgia.

Owl Transportation Lines, New York City, general commodities, New York, Philadelphia, Baltimore and Richmond; F. W. Goldston, R. L. Goldston, and J. D. Goldston, of Wake Forest, N. C., specific commodities from points in North Carolina to Richmond, Baltimore, Philadelphia, and New York, and from New York, Philadelphia, Baltimore, and Richmond to points in North Carolina; Ruhl Transportation Company, Salem, N. J., specific commodities, New England, New York, Philadelphia, Baltimore; Joseph Meltzer Transfer & Express, Inc., of

Baltimore, general commodities, Baltimore, Washington, Philadelphia, and New York; Bruce-Murray Corporation, New York City, application pending for general commodities, which includes New England, New York, Philadelphia, and Baltimore.

**EXAM. BAKER.** Mr. Lawson, when you said that company has an application pending, did you mean an application pending under the grandfather clause of the Act?

**THE WITNESS.** That is correct, sir. Service Transportation Company, Inc., of Seacaucus, N. J., general commodities between New York City, Philadelphia, and Baltimore. That application is also pending under the grandfather clause of the Act; Vernon T. Mercer, of Coatesville, Pa., specific commodities, including New England points, New York, Baltimore, Philadelphia, Richmond, Greensboro, Charlotte, and Greenville.

1098 Owens Transfer Company, Scranton, Pa., general commodities between Baltimore and Philadelphia; Edward Conen Transportation Corporation, Brooklyn, N. Y., general commodities, New York City and Philadelphia; Dunn's Motor Express, Richmond Hill, N. Y., specific commodities, New England, New York City, Philadelphia, and Baltimore; White's Express & Transfer, Inc., of Bloomfield, N. J., application under the grandfather clause pending, including New England, New York, Philadelphia, Baltimore, Richmond, Greensboro, and Charlotte; Stone's Express, Inc., of Boston, Mass., has an application pending, including New England, New York City, Philadelphia, and Baltimore.

Beach Transportation Company of New York City has an application pending, including New England, New York City, Philadelphia and Baltimore—general commodities; George's Transportation Company, Inc., of Baltimore, Md., general commodities, New York City, Philadelphia, and Baltimore; Highway Transportation Company, Inc., of Hammondton, N. J., general commodities, Philadelphia, New York City; Brown's Trucking Company, Trenton, N. J., general commodities, Philadelphia and New York City; Kirby & Kirby, Inc., Trenton, N. J., general commodities, New York City and Philadelphia.

1099 Courteous Transfer Lines of Philadelphia, Pa., general commodities, New York City and Philadelphia; McCormick Transportation Company of Wilmington, Del., general commodities, New York City and Philadelphia; James Gallagher, Inc., of Philadelphia, Inc., has an application pending, general commodities, including New York City, Philadelphia, and Baltimore; Zentz Motor Line, Inc., of Baltimore, Md., general commodities, Baltimore, Philadelphia, and New York City; Columbus Motor Freight, Inc., Riverside, N. J., general commodities, New York City and Philadelphia.

Masten Trucking Company, Inc., of Millport, Del., general commodities, Philadelphia and Baltimore; Union Transfer Affiliated Company, Philadelphia, Pa., general commodities, New York, Philadelphia, and Baltimore; Aero Transportation Company, Philadelphia, Pa., general commodities from Philadelphia, New York, and Baltimore and Richmond; application pending; Hicks Brothers, Inc., of Belvedere, N. J., New York City, Philadelphia, and Baltimore; application pending.

Q. Does that complete the list you have before you?

A. Yes, sir.

Q. Let us go back to this chart for one additional question. The perpendicular lines as between the points indicated in 1100 the left-hand column represent the extent of the operations of the particular companies, which operations are carried on in both directions; is that correct?

A. To the best of my knowledge, it is; yes, sir.

Q. Do you have any information with respect to the aggregate number of pieces of equipment operated by these companies, the names of which you have read, together with the names of those appearing on Exhibit No. 16?

A. There are something like 325 carriers, I think, included in the exhibit, and those that I have just named in the record. Of that number, exactly 100 files of the Commission were unavailable to me, and, therefore I do not know how much equipment those 100 carriers are operating.

The remaining carriers, according to the BMC-71 applications for Interstate Commerce Commission's identification plates for equipment, show a total of 2,675 straight trucks, 3,671 tractors, and 3,917 trailers, or a total of 10,263 units.

Q. And that information was secured from the files of the Interstate Commerce Commission, and are as of what date?

A. Yes; I secured that information from the files of the Commission, and the information was obtained as late as last week—the first part of this week, I mean.

Q. What I have reference to is the number of pieces of equipment as shown by that information. What is the date of 1101 the information, and not the date on which you secured it?

A. Well, the dates of the applications range from late in 1937, when they were first required, until recent time. There is no uniformity in the matter of dates, as far as the applications are concerned. We took the last application, if there was more than one in a file, and determined from it the number of units being operated, which information is required.

Q. How often are those applications filed by a motor carrier?

A. Well, it would depend on the number of times that they

add additional equipment or require replacement tags, or something of that sort. There is not anything uniform about that. We found some carriers that had only one application on file. Then, there were other instances where a carrier never applied for any tags at all, as far as the records are concerned.

Q. Take a carrier whose application you examined as of the year 1937. Would that indicate to you the number of pieces of equipment that he is now operating, assuming that he is operating, or would you have to see the additional ones for tags, as additional equipment was purchased?

A. Yes; we would trace up through. If there is more than one application on file, you have to trace through to the final.

Q. Did you trace those applications through?

A. Yes, sir.

Q. Is there anything else, Mr. Lawson, that you wish to say about this exhibit?

1102 A. Yes, sir. At page 1 of the exhibit, I observe an error in the preparation of the chart. The Mason & Dixon, column 10, shows service at Greenville, S. C. There should be a circle indicating that the carrier does not operate to that point, to the best of my knowledge.

Q. Is there anything further?

A. I believe I said that column 20 should be stricken on that page. If I did not, I should have.

Q. Mr. COCHRAN. Those are all of the questions on direct examination.

#### Cross-examination by Mr. MACDONALD:

Q. Mr. Lawson, are all of these carriers which were included in Applicant's Exhibit No. 2 also included in this exhibit, which is No. 16?

A. Yes; I believe so. I think I am correct on that.

Q. What classes of carriers have been eliminated, if any, from this group? In other words, has any distinction at all been made on any basis as to the carriers to be included and those not to be included?

A. Well, do you have in mind the classification according to the Commission's formula, or do you mean with respect to the particular types of transporters, like household goods, as against general commodities, or something of that kind?

Q. Whatever you had in mind and used in your classification in preparing this.

1103 A. Well, we used common carriers and made no distinction in the preparation of this exhibit as between class 1, 2, and 3. We did, however, include such carriers as household goods, bank truck operators, fresh fruits and vegetable transporters, who

may be transporting some other commodity in the opposite direction, and new furniture carriers. We did not include those. With respect to new furniture carriers, I have in mind only those carriers which are authorized to transport new furniture only. There are carriers included here who transport new furniture and also general commodities.

Q. Was there any distinction made as to the regular and irregular route operators?

A. No.

Q. In order to be shown on this chart, they would necessarily have to have some regular routes; would they not?

A. Well, no. This chart was not prepared to indicate the highway route.

Q. I understand that, but if you say he is operating from, say, Greensboro to New York, would that indicate a regular route, or information that he actually does operate over that route, having only an irregular route authorization?

A. Yes.

Q. So that this represents in part Commission records and in part observations and knowledge of those who prepared it.

1104 A. Page 1; yes.

Exam. BAKER. Let us clarify that point, Mr. Lawson. In connection with an irregular route operator, if he was authorized to originate traffic in New York and transport it to Greenville, you would show that service on this chart, would you not?

The WITNESS. That is correct.

Exam. BAKER. Whether he was authorized to conduct that transportation over an irregular route or regular route.

The WITNESS. Yes, sir. That is exactly the situation with respect to Barnwell in the exhibit, sir. He has an authorization extending along the Eastern Seaboard over irregular routes, but I have observed his operation at these points as I have set it out here.

By Mr. MACDONALD:

Q. What have you to say as to the inclusion or exclusion of the radial or non-radial irregular route operators?

A. I can answer that, first, by saying as to page 1, that represents operations of which I have personal knowledge. As to the other two pages there may be some radial and non-radial operators in there. However, the points for which it has been shown are included in such authorization. I did not make any attempt to include or exclude any such classified carriers, and I might add that there are very few non-radial operators that I know of  
1105 in the East-South service. It is just not that operation.

They follow along generally in the territory where the traffic flows, and that is the East and South.

Q. Is it your contention that all of these carriers as shown on this exhibit are in competition over at least part of the routes, with the lines concerned in the merger?

A. No. All of the carriers on the three pages?

Q. Yes.

A. Well, it is my contention that the carriers shown on the first page are in such competition. As to the other two pages I do not know what the extent of their operation is; so that I do not know that they are actually operating. They are authorized, and in some cases they are actually operating.

Q. Did you determine the relative gross operating income of these carriers?

A. No; I did not, sir.

Q. Is it possible for carriers which are shown to be operating over some routes, so far as this chart can show it, to be operating on separate routes actually, because of different highways which they might be following?

A. Well, yes, but they cannot avoid the points here. These are the principal points. I will illustrate that by saying that from Baltimore, Md., southward that you may have three routes over which you could reach Atlanta, Ga. There are more, but those are the main routes; but the carriers that I have shown on 1106 here, with the exception of the Mason & Dixon line, according to my information, operate generally over the eastern route, or the one going through Richmond, Greensboro, Charlotte, and Greenville. The Mason & Dixon's operation between Baltimore and Atlanta, Ga., is, as I have explained, outside the hearing, the valley route, going down through the Shenandoah Valley of Virginia.

Q. You said that of your personal knowledge, the carriers on page 1, I believe it is, of the exhibit were at least in part competitive with lines in the unification.

A. Yes, sir.

Q. Would you say that carriers 50, plus 45, plus 42, plus 33, plus 57, and plus 31, would be competitive between New York and Atlanta, with the operation of the Horton Motor Lines?

A. It would be possible for them to form such a joint through route.

Q. I am asking you whether they are competitive today.

A. No; I don't think so, between New York and Atlanta, Ga.

Q. These portions would represent only routes between two adjacent cities, as New York and Philadelphia, or Charlotte and Greenville, would then be competitive only for the operations

between those two points, and could not be lumped together with other short-line operations to equal the service of a long-line operation; is that right?

A. Not quite. You had the extreme illustration when you began with Victor Lynn in New York, and finished with the  
1107 New South Express Line. The competition of those carriers between the points that I have stated here is of considerable consequence to our carriers. The New South Express Line, for example, is a very strong competitor of ours in the South. Now, they have operations in conjunction with—let us see if I can select one here for you—the New South Express Line has a connection with Harris, carrier No. 6, for example, into the New York area, and by joint arrangement with two lines competing with the Associated carriers.

Q. That is a two-line service?

A. Yes.

Q. As compared with a one-line service?

A. Yes, sir.

Q. Rather than a five- or six-line service, which, I believe, is the basis for my example.

A. That is right.

Q. Now, you stated in several cases the routes you have indicated are those in the applications, upon which no official action has yet been taken. Am I right in that?

A. Well, I have not indicated any routes at all. I have just indicated the points that are served by these carriers, or that are authorized to be served by others. Maybe I misunderstood your question.

Q. Well, insofar as the points served must be connected for continuity of service, certain indications of points served or  
1108 routes are set out in the applications of the carriers that they make under the grandfather clause; are they not?

A. The routes are set out.

Q. In the cases of those carriers which have not yet been given a certificate, you determined routes or points served from their applications only; did you not?

A. Not as to page 1.

Q. These are all certificated carriers?

A. Yes; with the exception of one correction I made in the matter of carrier 7, I believe it was.

Q. My question was not limited to page 1. As to some of the carriers on the exhibit, your information was taken from applications on file.

A. That is correct.

Q. You are connected with the Horton Motor Lines; are you?

A. That is right; yes, sir.

Q. You are acquainted with the procedural aspects of applications under the grandfather clause?

A. In a general way; yes, sir.

Q. Would a motor carrier tend to limit its requested rights in its application, or would it tend to put in everything which it felt there was a reasonable expectation of getting?

A. I should think that they would include everything that there was any possible chance of obtaining.

Q. So, and so far as their carriers are concerned, it is possible that their routes will not be so extensive under their certificates as intended under their applications?

A. That is true, I guess, with a number of them, but that does not apply to the carriers that I have indicated on page 1. That may be true of the ones on pages 2 and 3 that I have mentioned as having applications pending before the Commission at this time.

Q. You stated a few moments ago that the distinctions you made in classifying carriers to be excluded included household carriers; is that right?

A. Household goods; yes, sir.

Q. Are you acquainted with the operations of carrier No. 183 on the exhibit, Greyvan Lines, Inc.?

A. I am not familiar with the operations of that carrier.

Q. You have investigated it in the files of the Commission?

A. Yes.

Q. You do not know, as a matter of fact, whether they are a household goods carrier solely; do you?

A. My information is that they applied for household goods and general commodities, and I think the compliance order restricted them to household goods and either office equipment or typewriters or computing machines, or something like that. I believe there is another commodity, or two or three commodities, including household goods and office furniture and equipment. My knowledge of that operation is that they are a household goods carrier, at least they have been tentatively given some additional commodities, which, in my opinion, takes them out of the category of a strictly household goods operator.

Q. Then, the basis upon which these carriers were included was that if they carried more than a special commodity, they were considered competitive; is that right?

A. No.

Q. What would you call—

A. For example, if a carrier carried one of these machines or typewriters, and that was the only commodity he had, I would consider him a competitive line, but he might have two or more, as you say, special commodities, but if he was restricted to house-

hold goods only, I did not include him, and I did not consider him a competitive carrier.

Q. You spoke of the New South Express Lines as being a considerable competitor with the lines in the merger, locally in North Carolina, I believe.

A. South Carolina.

Q. South Carolina?

A. Yes.

Q. How extensive are the operations of the lines concerned in the merger in South Carolina?

A. Very slight; that is, the operations of the associated carriers extend along generally U. S. 29 from Charlotte, N. C.,  
1111 through the northwestern and western part of South Carolina into Georgia. I should say that is possibly 175 miles. Of course, they have a few little short lines, extending off that route into the mill points, but the operation is not as extensive as the New South Express.

Q. The New South Express has extensive operations in the eastern and southern part of South Carolina, does it not, extending down into Florida?

A. No.

Q. Down into Florida?

A. No. They serve what is known as the Horse Creek Valley and the Piedmont section of South Carolina. They go into Columbia and down into Augusta. They cover the western part rather thoroughly, and come into Charlotte. And they also operate into Georgia.

Q. Are they exchange carriers with the Horton Motor Lines?

A. Yes, sir.

Q. So that in some sense, at least, they are not competitive, but rather supplementary.

A. Well, that is true, into Horse Creek Valley; yes.

Q. Is there any considerable exchange between Barnwell and Horton?

A. No; I don't think so.

Q. As a rule, it could be said, could it not, that strong competitors do not exchange.

1112 A. I guess that is right.

Q. Could it be said, as a general rule, that the theory upon which this exhibit is based is that any carrier, with the exception of those that carry household furniture or the other named commodities and specialties, such as oil, fresh fruits and vegetables, and automobiles, are considered competitive as to the lines concerned in the merger?

A. Yes, sir; except on page 1, again. I go back to that. It was on that page that I included the general commodity carriers

who have extensive operations in the territory I have shown here.

Mr. MACDONALD. That is all I have, Mr. Examiner.

Mr. COCHRAN. I have just one question, Mr. Examiner.

Redirect examination by Mr. COCHRAN:

Q. In excluding carriers, you exclude contract and private carriers in that exhibit.

A. Yes; I do.

By Mr. FAGG:

Q. Mr. Lawson, Exhibit 16, page 1, shows solid lines, five of them, New York to Atlanta. Is this proposed to represent all of the through one-controlled truck operation from New York to Atlanta? Does it include through service through such points as Hagerstown and Shenandoah Valley?

The WITNESS. Will you read that question, please?

(Question read.)

A. Yes. In the first place, Mr. Fagg, there are eight of those through lines from New York to Atlanta shown on page 1. It includes the carriers operating down the East Coast, as well as down the Shenandoah Valley. I believe the Mason & Dixon Lines operate through Hagerstown, for one.

Q. In other words, that half circle on line 10 indicates north of Richmond, and that line might go down through the Shenandoah Valley.

A. That is correct. It is my understanding that that carrier operates over the western route. As a matter of fact, they are operating over U. S. 29 through Lynchburg at the present time, and also down through U. S. 11 through the Shenandoah Valley. They do not—

Mr. MILLER. Mr. Lawson, will you elaborate what the recent Division 5 order was in connection with the Lynchburg-Richmond, Va.—

Exam. BAKER. You will have an opportunity to cross-examine, Mr. Miller:

A. To my knowledge, they do not operate through Richmond, and it has been so indicated here, Mr. Fagg.

By Mr. FAGG:

Q. Are there any other routes of motor truck common carriers, other than the eight, that I could secure to haul my goods from New York to Atlanta?

A. There are several shown on page 2.

Q. Are these all common carriers that are operating under a temporary permit from the Commission on page 2, from New York to Atlanta?

A. No. They are either authorized by a certificate or have received a compliance order, or their application is pending.

Q. In other words, it is a legal question, as far as the Motor Carrier Act is concerned?

A. To the best of my knowledge: yes, sir.

Q. Take page 3 of your Exhibit No. 16. No contract carriers are included in the description specific commodities carried?

A. I included no contract carriers in any part of the exhibit, sir.

Q. Do you know of any contract carriers operating from New York and/or Philadelphia and/or Baltimore to, say, Charlotte and Greenville?

A. Offhand, I would say that I cannot recall any at the present time. There may be some, but I don't know right offhand about them.

Q. Would you say that contract carriers are operating between New York and Philadelphia and Baltimore?

A. Yes; I have seen operating authorities for such carriers.

Q. Will the contract carrier operation continue over a competitive route with the carrier that you represent, from Baltimore to Richmond?

A. There are contract operators in there, too; yes, sir.

Q. Are there contract carriers between Richmond and Greensboro?

1115 A. There may be one or two. I cannot recall at the present time. I think there are one or two special commodity carriers in there.

Q. Have you any intrastate operations shown on your Exhibit No. 16?

A. Yes, sir; No. 57 is wholly within the State of North Carolina.

Exam. BAKER. Mr. Lawson, by that do you mean that they are not authorized to haul goods moving in interstate commerce?

The WITNESS. No, sir. He said intrastate operators, and I indicated that this carrier is an intrastate operator, but this exhibit reflects only carriers that have rights to transport in interstate commerce.

By Mr. Fagg:

Q. Then, are there other intrastate operators shown between points in the lefthand column of your Exhibit No. 16, that are not included, between—

Exam. BAKER. Mr. Fagg, you might explain what you mean by "intrastate operators." Do you mean operators whose operations are physically confined to one State, or do you mean operators who transport only commodities moving in intrastate commerce?

Mr. Fagg. Intrastate operators authorized to do an interstate business under the Motor Carrier Act, which would cause them in their physical operations to operate within a State, but would permit them to handle goods known as interstate.

1116 The WITNESS. Well, Mr. Fagg, in my exhibit it is only possible to reflect an intrastate operator between such points as Greensboro and Charlotte, those being the only two points named in the same State, and you will notice that carrier No. 57 is the only one so named. All the others operate across State lines and are interstate carriers, as well as transporters of interstate commerce.

By Mr. Fagg:

Q. You are offering no evidence or exhibits having to do with contract carrier operations?

A. No; I paid no heed at all to contract operators.

Q. The furniture carrier, or furniture carriers that you referred to, are they contract carriers?

A. None that I know of. All of them are common carriers, either authorized or claiming it.

Q. In your Exhibit No. 16 you show carrier No. 44, Shein's Express, operating in competition to Horton, between New York and Philadelphia. Does that mean that that is the only operation of the Shein's Express?

A. Well, no, sir. This is as extensive as I can show it on this particular exhibit, sir. No, these carriers are not restricted to—I believe I can safely say that none of these carriers are restricted only to the points that I have shown above here on this exhibit.

Q. In other words, it might afford extensive operations.

A. Every one of them has.

1117 Mr. Fagg. All right. Thank you.

By Mr. MILLER:

Q. Mr. Lawson, will you turn to page 4 of Appendix A of your exhibit carrier No. 182?

A. Yes, sir.

Q. And also refer to your chart, and indicate to me the operations that they are in.

A. 182. According to the Commission's records, that carrier can serve Philadelphia, Baltimore, Richmond, Greensboro, and Charlotte, as reflected here. I do not know what his operation is.

Q. Do you know where his headquarters are located?

A. I have it here before me.

Q. I will refresh your memory, possibly—Norfolk, Va.?

A. Yes; I believe that is correct.

Q. Your exhibit shows that the Draper Motor Service operates, Philadelphia, Baltimore, Richmond, Greensboro, Wilmington, Burlington, and Charlotte. Does he serve those intermediate points that I have named between Philadelphia and Charlotte, according to your exhibit?

A. No; I do not believe we are in harmony as to what the exhibit shows here. Page 2 does not purport to show the actual operations of these carriers. That carrier either has a certificate, a compliance order, or a grandfather clause application pending, under which it could be operated to the points shown opposite it here.

1118 Q. To the points you state? Would you say between the points?

A. If I may have a minute, maybe I can refresh my memory on the detail of his authority.

Q. I would appreciate it very much if you would. From the representation on the exhibit, I think it is a little confusing.

A. I believe that that carrier has a C-1 compliance order of the Commission, which authorizes service between Roanoke, I think it is, on the one hand, that area, and other points as far distant as Philadelphia, on the other hand, and if that is correct, if that is the kind of authority that it has, I would say that it could operate between Philadelphia and Baltimore, on the one hand, and Greensboro and Charlotte on the other.

Q. How would it operate between Richmond and Charlotte?

A. Well, if that is the authority, it would have to swing from Richmond through to the Roanoke area, and then into Charlotte.

Q. How would it operate between Greensboro and Charlotte?

A. That would be intrastate. They could not transport interstate traffic in that fashion, unless they went back through Roanoke again.

Q. That would be a very circuitous route.

A. Yes; that is right.

Q. In other words, on carrier No. 182, I believe you agree with me that that is an irregular route radial carrier as shown on the exhibit, and operates from Richmond and Burlington

1119 to Charlotte, but it has no direct service of that nature, but will have to go through Roanoke, Va., which would be a circuitous route.

A. Well, the exhibit was not intended to portray direct service, because line 182 of the graph here does not represent a route. It merely indicates that that carrier has some kind of authority to operate at Philadelphia, Baltimore, Richmond, Greensboro, and Charlotte. Now, over what highways it would operate is unknown to me.

Q. Well, would you say that you do believe that a radial irregular route carrier does have authority to transport between certain points, as long as it goes to its base points?

EXAM. BAKER. That is a question of law, is it not, Mr. Miller?

MR. MILLER. I believe Mr. Lawson has, in all probability, made that clear to the Commission.

By Mr. MILLER:

Q. Carrier No. 167, page 4 of your exhibit, O. C. Wiley & Sons, Inc., will you indicate the operation that you show on your exhibit?

A. That carrier has an application pending before the Commission, and such application includes Richmond, Greensboro, and Charlotte as points it may serve.

Q. In fact, is O. C. Wiley & Sons, Inc., another radial irregular route carrier, with operating base at Richmond, Va., 1120 to your knowledge?

A. I don't know. I have not been able to figure out what he has.

Q. Are you acquainted with the competition which he is at present giving to Horton and Barnwell, if any?

A. Well, he is giving some competition, but I cannot say that I am familiar with the extent of it; no.

Q. Carrier No. 157, Booze Truck Lines: Will you please indicate in what manner that operation is competitive to any carriers in this proposed consolidation—Booze Truck Lines.

A. I am trying to refresh my memory on that. I believe, in addition to his regular route—I think I can recall correctly—in addition to his regular route operation, he has a radial operation from Roanoke, which includes—I believe it extends 150 miles from Roanoke into Virginia and North Carolina, or at least into North Carolina. He has some rights over to Richmond. I cannot recall the detail of his operating authority. As a matter of fact, Booze has a certificate including such authority.

Q. Well, to the best of your knowledge, does he render any service whatsoever between Richmond and Charlotte?

A. Between Richmond and Charlotte?

Q. Yes.

A. I don't know if he does.

1121 Q. And if he did so he would have to render it through his base point, Roanoke, Va.; is not that correct? You stated he was a radial carrier.

A. Well, he has a regular route operation into North Carolina.

Q. To Winston-Salem?

A. Yes; I believe you are right, that into Charlotte he would have to go under his certificate, or come over through Roanoke to get there.

Q. He would not be a serious competitor with the competitors that operate from Richmond down to Greensboro or Charlotte; would he?

A. Well, it depends upon your definition of "serious." He could transport the traffic.

Q. Serious, as far as Barnwell and Horton are concerned.

A. He would have a circuitous route to follow. I would not consider him a serious competitor between those points, no, but there are many other points included in that certificate of his, where it would be very serious.

Q. Well, would you not reflect it on your exhibit?

A. Well, it was not possible to do that without using reams of paper. The carrier covers the entire western part of North Carolina. I should say, perhaps, the area would include more than the western part and all the industrialized part of North Carolina.

Now, moving up from Charlotte into Greensboro area 1122 and into the tobacco manufacturing section, the operating authority there is a serious proposition, as far as our company is concerned, because he could give service in there.

Q. Your company does not serve Norfolk, Va., does it?

A. No; Barnwell does, and so does Southeastern.

Mr. MILLER. Mr. Examiner, I have not been present all the time, and I do not know whether any stipulation has been made in this proceeding by which we can refer to various documents in the Commission of these motor carriers to indicate the operating rights, as shown actually in the documents filed with the Commission. I believe that such a stipulation is necessary in order to clarify such exhibits as this.

Exam. BAKER. No such stipulation has been made.

Mr. MILLER. I would like to inquire whether it is agreeable with the applicant to make such a stipulation.

Mr. SULLIVAN. Certainly; all of the Commission's records of any kind or nature whatsoever we would be happy to agree be made a part of it, including every report which has ever been made on the subject of motor carriers.

Mr. MILLER. Thank you, sir.

Exam. BAKER. How do the other intervenors feel about such a stipulation?

Mr. MACDONALD. There is just one question, Mr. Examiner. Will that include the report on the prior application of the motor carriers concerned here, Dockets MC-F-1223, 1244, 1123 and 1264?

Exam. BAKER. As I understand Mr. Miller's request, the stipulation would be that reference might be made to the certificate applications of the carriers that have been mentioned as competitors of the carriers involved in this unification. Is that correct, Mr. Miller?

Mr. MILLER. That is correct, and I believe Mr. Sullivan is even willing to go further and broaden it.

Mr. SULLIVAN. I just said anything you want, sir, is all right with me.

Exam. BAKER. I do not assume that you incorporate everything.

Mr. MACDONALD. It is our feeling that if any of the Commission's records are to be included, the annual reports, which do not seem to be included, but which give very valuable information as to the character of these carriers, and any other records which are pertinent, should be included. Of course, it is limited in its scope, just by the nature of the subject.

Exam. BAKER. Well, suppose we confine ourselves to the particular stipulation that Mr. Miller is speaking of at this time, and pass on one thing at a time.

Mr. MACDONALD. Well, I would suggest this: Would that be limited to the certificate docket file?

Exam. BAKER. That is my understanding of Mr. Miller's 1124 request.

Mr. MILLER. That is my request, but I would make a further request, to this extent, that I would like the privilege of referring to the Commission's records which deal with the issuance of the I. C. C. license tags to various carriers, because they indicate, sir, the tractors and trailers that they operate.

Exam. BAKER. Mr. Miller, all of that information will be contained in the annual reports to these carriers, and a stipulation has been entered into that reference might be made to their annual reports.

Mr. MILLER. That is as to class I carriers.

Mr. MACDONALD. No objection.

Exam. BAKER. Do any other intervenors have any objection?

Mr. Miller, in order that there may be no confusion, I suggest you restate, in specific language, the type of stipulation that you desire made.

Mr. MILLER. My original request was that the parties be permitted to refer to the MC dockets on file with the Commission to ascertain the operating authority either applied for or granted. I made the further request that permission also be given to the various parties to refer to the proper section of the Commission to determine the number of the I. C. C. identification plates issued to

various carriers, in order to determine the number of vehicles which they operate. I believe the annual reports would get that information as to the class I carriers, but as to the other carriers I believe the only manner in which it could be determined would be by the number of identification plates actually issued.

Exam. BAKER. If there is no objection, the record will show that all parties agree to the suggested stipulation. Now, you may proceed, Mr. Miller.

By Mr. MILLER:

Q. Mr. Lawson, on page 1 of your exhibit, carrier No. 3, identified as Howard Hall Company, Inc.: Are you familiar with the type of operation conducted by that carrier?

A. Not the full extent of its operation. I know that it is operating into the East from Birmingham and that territory. It applied for quite broad operating authority throughout the eastern part of the United States. I mean by that, the part east of the Mississippi River. I do see its equipment operating through these towns here that I have indicated. I have seen that within recent times.

Q. Would it be your opinion that this carrier is principally engaged in operation between Alabama points and eastern points?

A. I should say that perhaps that is true at the present time.

Q. Would that also be your testimony as concerns carrier No. 4, Jack Cole Company, Inc., and also the Alabama Highway Express, Inc., carrier No. 66?

A. Well, with respect to carrier No. 4, I do not know whether that carrier is operating exactly the same as Hall is now or not, as he was some time ago. He has had some change in his type of service. He has become quite a heavy competitor in the New York area, as far as our line is concerned. It is pretty hard to follow some of these lines to determine whether they are continuing the claimed irregular route radial operations that they may have at one time performed, or converted into a regular route between certain points. Now, as to carrier No. 66, that operator claims the right to operate to New York? I do not know anything about its operation, except what I have observed in Georgia and northern Alabama, and I believe western South Carolina.

Q. Carrier No. 14, Central Motor Lines, Inc.: Are you familiar with the type of operation conducted by that carrier?

A. Well, to the extent that I have indicated here, yes. Of course, that carrier is operating as far west as Chicago, Ill., from the Carolinas. It has a very broad operating authority claim on file before the Commission, including everything, I think, east of

the Mississippi River, and also has a certificate which they purchased from another line. I do not know the full extent of its operation, but it is operating to the extent that I have shown here, to my personal knowledge, and quite frequently, too.

1127 Q. Of what commodities does its principal outbound traffic from the Carolinas consist: do you know?

A. I think as to the outbound traffic, its source of business is the Cannon Mills Company. That includes cotton textiles, silk hosiery, and I don't know what all commodities the Cannon Mills manufacture. It is quite an extensive business in the Carolinas. They transport, however, for other people, too. I should say that textiles probably are its principal outbound traffic.

Q. Originating from which point?

A. I was trying to recollect the location of those mills. One of the biggest mills is at Kannapolis, N. C., but that is not the only one they have. I think they have three large cotton mills, and when I say "large ones," I mean ones that occupy practically the entire town in which they are located. Kannapolis, for example, is practically all Cannon Mills. I don't know where the silk hosiery comes from; that is, I do not know at what point they manufacture that.

Q. Carrier No. 7, McLean Trucking Company, Inc.: Are you familiar with the type of competition which he gives to the Associated Transport Company?

A. Yes, sir.

Q. Will you state what that competition is?

Exam. BAKER. Of course, Mr. Miller, there is no Associated Transport Company operating at the present time.

1128 Mr. MILLER. I should have said the associated companies; or, as Mr. Lawson has it in his exhibit, certain representative and principal motor common carriers composing a part of Associated Transport, Inc.

The WITNESS. I think I understand what he has in mind. With respect to the character of the operation of McLean, I can say that he claims to be an irregular route carrier serving the central part of South Carolina, including all of the Piedmont section, which would include all of Horton and Transportation Companies' territory, or routes in South Carolina, the central and Piedmont section of North Carolina, which includes all of the territory operated by Horton, Barnwell, and Transportation, with the exception of Asheville. I believe McLean has restricted his application in the western part, finally. He operates into or through Richmond. I don't know that he serves that point, but his trucks go through, coming up U. S. 1 into Washington, Philadelphia, Baltimore, and New York, and claims large areas around

each of those terminal points, and on into New England. He is at the present time transporting directly between North Carolina and New England.

By Mr. MILLER:

Q. One commodity?

A. No; he claims to be a general commodity carrier. He is transporting a variety of commodities.

Q. As to the number of carriers in this exhibit, which I will not take the time to point out, but the names of which I believe you are familiar with, would you say that generally their operation had been from North Carolina, transporting furniture, a commodity on which Horton and Barnwell restrict their tariffs?

A. No; I don't think that would be a correct statement. Carrier No. 15 is a certificated carrier between New York and Greensboro, S. C. He has a certificate more inclusive than all the territory of Horton and Barnwell put together, and I seriously doubt that he transports furniture at all.

Q. And what about Carrier No. 19, Hooks Motor Lines?

A. The Hooks Motor Lines is at High Point, N. C., which is a large furniture producing center, and a considerable amount of his northbound traffic is furniture, but my recollection is it is not confined to that commodity. He is actually transporting other commodities, too.

Q. And would your statement with reference to Hooks also be true as to carrier No. 51, Colonial Motor Freight Lines?

A. I believe that is true. I think that generally they are about the same kind of operator. Their operations are not as extensive, however. They run over more or less a regular route.

Q. Would that also be true as to carrier No. 85, Stanleytown Motor Lines, Inc., with reference to his particular basing point, Bassett, Va.?

A. Yes. I believe Stanleytown.

1130 Q. Located at Stanleytown?

A. Well, it is in that furniture producing section, the southwestern portion of Virginia, and my recollection is that his outbound traffic is substantially furniture.

Q. There are a number of furniture carriers, principally operating in the Carolina-Virginia territory, that are reflected here upon which I cannot presently locate; are there not?

A. Yes; they are furniture carriers in the sense that they carry furniture; but they certainly do not limit themselves, and I do not think the Commission has limited them; at least, the ones that I have indicated on page 1. I do not know how the car-

riers—I cannot tell you about the details of the traffic carried by the carriers on pages 2 and 3. I do know about some, such as Stanleytown, which you mentioned, but the carriers on page 1 are transporting a variety of commodities. Of course, the variety outbound from North Carolina is somewhat limited by the very nature of the business that is carried on down there, and the shipments that move out. The inbound, however, gives you an entirely different picture. The people in that section of the territory, and the manufacturing concerns, are drawing business and materials from these other areas in there constantly; so that while the carrier may transport cotton textiles from one of the big cotton mills outbound, he is very likely transporting a variety of inbound traffic.

Q. Carrier No. 55, E. T. & W. N. C. Motor Transportation Company, shown on your chart as serving Greensboro, Burlington, Charlotte, and Greenville? Do you know anything about the nature of the operation conducted by that carrier?

A. By "the nature," what are you referring to? I don't understand that.

Q. Well, as a matter of fact, does the E. T. & W. N. C. Motor Transportation Company operate generally between points in the Carolinas and Tennessee points without interchange?

A. They have quite an extensive operation in North Carolina, and they swing over to Asheville, or into the western part of North Carolina. I do not know whether they go to Asheville, in order to get on the road going directly southeast to Greenville. They do go into Greenville. I have seen their operations down there. I have seen their equipment in that town.

Q. Mr. Lawson, I believe you are familiar with the number of applications filed under the grandfather clause by the motor carriers throughout the country, and I am wondering whether you have any statistics to indicate the number of one-truck operators.

A. Yes; I have, but I do not recall much about it now. I never paid a lot of attention to those so-called one-truck carriers. I do not find many of them.

Q. A large percentage of furniture carriers in business are one-truck operators; would you not state that?

A. No, sir. As I have just said, I find very few one-truck operators. Of course, I have not made any special effort to turn them up or reveal them, but—

Q. As to carrier No. 10, I note you indicate that that carrier is serving Greenville.

A. I corrected that. It was an error in drawing this chart.

Q. Did you say why you loop a line to that carrier over Richmond, Va.?

A. Yes; because I did not know that that carrier serves Richmond, and I don't know now that it does.

Q. You are acquainted with the recent Division 5 report that that carrier is entitled to serve that point?

A. Yes, sir.

Mr. MILLER. That is all.

Exam. BAKER. Are there any further questions of this witness. Witness excused.

(Witness excused.)

Exam. BAKER. We will take a recess.

(There was a short recess taken.)

Exam. MAKER. Come to order, please.

Mr. COCHRAN. I would like to offer in evidence, if the Examiner please, the document marked for identification as  
1133 Applicant's Exhibit No. 16.

Exam. BAKER. Applicant's Exhibit No. 16 will be received in evidence.

Mr. MacDONALD. Mr. Examiner, you have not asked for objections. I might possibly have objections.

Exam. BAKER. I am sorry, sir.

Mr. MacDONALD. I thought you were writing something. I object, on the ground that the exhibit does not show a complete representation of the facts it purports to show, and no evidence of which is clearly upon the record.

Mr. MILLER. I would like to join in that objection, for the same reasons, especially as it relates to pages 2 and 3 of this chart, which, in my opinion, cause a great deal of confusion because the lines up there present a picture of carriers between those points, and the testimony of the witness shows that such is not the case.

Exam. BAKER. In the Examiner's opinion, the objections are directed primarily to the weight of the exhibit rather than to its competency. The exhibit will be received in evidence.

Mr. MILLER. Exception.

Mr. MacDONALD. And you will note an exception by us, Mr. Examiner.

Exam. BAKER. Noted.

(Exhibit No. 16, Witness Lawson, received in evidence.)  
1134

Mr. SULLIVAN. Mr. Reicher.

HARRY J. REICHER resumed the stand and testified further as follows:

Direct examination by Mr. SULLIVAN:

Q. You have testified before?

A. Yes, sir.

Q. Mr. Reicher, in connection with your testimony, there was offered in evidence an exhibit known as No. 13, which, at the present time, is still in typewritten form, although the original is at the photostaters. Have you had an opportunity to check the figures on that since you left the witness stand?

A. Yes, sir.

Q. Are there some errors in the figures on that exhibit which you wish to indicate?

A. There are just a few typographical errors. This schedule was typed at 4 o'clock yesterday morning and brought down here by plane to get here on time. It was checked during the day today, and I just wish to call attention to these typographical differences. With respect to the column "Horton Motor Lines," the item of \$58,840 treasury stock, should be in brackets, to show a deduction. The item under "McCarthy," on line 2 under "Additions to P. & L." has only one bracket, which may be confusing. There should be two brackets, indicating a deduction.

Item No. 3, under "McCarthy," and under "Additions to Surplus" should be \$110.58 instead of \$110.50. Item No. 13 is in brackets, and the brackets should be removed.

Exam. BAKER. What is the figure there?

The WITNESS. \$1,896.43. In the column "Horton Motor Lines," the total under "Additions to Surplus," at the bottom of the page, should be 75 cents instead of 73 cents. Under "Barnwell Brothers," the total of \$46,181.82 should have another bracket to indicate a deduction. Under "Barnwell," again, "Additions to Surplus," \$18,385.62 should have another bracket.

At the bottom of the page under "Barnwell," the brackets, in the amount of \$12,299.24 should be removed. Under column 31, under "Transportation, Inc.," line 31, the amount of \$369.92, under the "P. & L." column, should not have any brackets. On page 2, under "Arrow," line 5, there should be two brackets instead of one, in the amount of \$653.86. Under "Arrow," on line 28, the amount of \$2,084.69 should be \$2,048.69.

On line 2, the figure \$33,185.79, under "Arrow," should not have any brackets. The total in the column "Conger Realty Company," of \$25,878.78 should have two brackets instead of one.

Mr. SULLIVAN. That is all.

Exam. BAKER. Are there any questions?

Mr. WIPRUD. No questions.

Exam. BAKER. Witness excused.

The WITNESS. Thank you.

(Witness excused.)

Mr. SULLIVAN. Mr. Seymour.

1137 B. M. SEYMOUR, was recalled and testified further as follows:

Direct examination by Mr. SULLIVAN:

Q. You have been previously sworn and testified in this matter, Mr. Seymour?

A. I have.

Q. Mr. Seymour, will you state whether or not each of the designees provided in the contract in this matter have agreed to the adjustments of Mr. Reicher's report as being correct?

Mr. FAGG. May I have that question, please?

Mr. SULLIVAN. I have not finished it. Will you read the question as far as I have gone?

(Question read.)

By Mr. SULLIVAN:

Q. And have waived any right to the appeal that they might have under the contract?

A. They have. They have agreed as to the result of the audit, insofar as their own property is concerned, and the result of the audit on all other properties.

Mr. SULLIVAN. Those are all the questions I have.

Exam. BAKER. Is there any examination on that?

Mr. MACDONALD. Well, Mr. Examiner, I might state that we would like to go into some other matters to which Mr. Seymour testified on his original examination, all of which are pertinent to the issue of the financial features, which Mr. Seymour is more in position to testify to, as to policy, than the financial witness himself was.

1138 Exam. BAKER. Mr. Sullivan, did you plan to examine Mr. Seymour later?

Mr. SULLIVAN. No; I think this about completes the examination that we have of Mr. Seymour.

Exam. BAKER. I understood he was going to testify at the close of the applicant's case.

Mr. SULLIVAN. We have not decided not to do that, Mr. Examiner, but I have no objection—unless something should turn up—I have no objection to their cross-examining him with respect to any matter they like.

Exam. BAKER. You may proceed.

Cross-examination by Mr. MACDONALD:

Q. Mr. Seymour, in regard to the need for additional working capital, I ask you to state for the record the amount, if you know, of the officers' salaries and bonuses paid out during the last year by the operating companies herein concerned.

A. In the aggregate?

Q. In the aggregate.

A. I cannot state it. It is available, but I would have to—

Q. Could you approximate the figure it would represent?

Mr. SULLIVAN. Just a second. Mr. Reicher can get that figure for us right away.

By Mr. MACDONALD:

Q. Mr. Seymour, the record discloses some conflict in the amount of savings to be anticipated. In the matter of insurance one figure was given as \$275,000, which was later revised to \$390,000, and I believe you stated at that time that that was following a conference with an insurance company; is that correct?

A. \$390,000.

Q. Was this company the Manhattan Auto Mutual Insurance Company?

A. No.

Q. Will the Manhattan Auto Mutual Insurance Company participate in the insurance program for the new company, if it is approved?

A. It will not.

Q. Referring to your testimony as to the saving estimated to result from the proposed merger in regard to solicitation expense, I believe the figure was \$150,000. How will displaced solicitors be used in the business, or will they be displaced entirely?

A. That has been the subject of very considerable discussion between the gentlemen who are interested and myself, and it is the opinion of the men for whom these men now work that they will be used otherwise in the company.

Q. You have not any idea as to what type of work they would be employed at?

A. Well, you have to be acquainted with the make-up of the personnel of the traffic department. Many of them are junior men; many of them are men that are not thoroughly seasoned solicitors. The need for a reduction of the solicitation is primarily a desire to render a better service to the shippers, because we certainly do not want to press solicitation to a point where the Associated Transport, if the application be approved—where solicitation becomes a matter of irritation and annoyance to the shipper.

Q. Each solicitor who is retained in the capacity of solicitor would solicit for all the lines concerned; would he not?

A. Certainly, as soon as the Associated Transport became the sole operating company.

Q. And in that regard, would it be reasonable to assume that information coming to a solicitor who had been employed by Consolidated, for example, could make the information which he had as to operations, from exchange carriers in other territories available to those members of the merger engaged in operations in those territories?

A. I would not imagine that there would be any reason for any secrecy as between the operating companies. What occasion there would be for it I cannot conceive.

Q. There would be a pooling, more or less, of solicitation information as a result of the merger?

A. Eventually, if the application be approved and the Associated Transport becomes the sole operating company, then I would certainly think that there would be a tendency to move  
1141 towards centralization of solicitation.

Q. Is it the intention of the officers to bring about a complete merger of identities within a practical period of time?

A. Yes; it is the intention of Associated Transport to become the sole operating company, with the qualification that sometimes we would very much prefer to continue the present units as operating divisions.

Q. That is, insofar as they are not duplicating.

A. Well, there would be no duplication eventually, because, certainly, we would want to surrender any duplication of rights.

Q. Well, for example, Horton and Barnwell, as I understand it, are largely duplicate carriers over the North-South route.

A. That is correct.

Q. Would they be kept in their separate identities, or would the operation of those two groups be a division operation?

A. Just as soon as they would be physically put together, we would want to surrender the right of either one company or the other.

Q. Will you please explain how the saving of \$250,000 for the first year and \$450,000 for the second year, and succeeding years in terminal costs will be accomplished?

A. That would be accomplished primarily—well, it would be accomplished in two ways; first, by a gradual consolidation of terminals, where that is feasible and possible, and where  
1142 two or three companies presently have the same number of terminals within one city, one terminal would take the place of three, and another terminal would be put in some nearby town to enable the company to render a better service to the shippers.

Q. Where there are as many as five or six terminals in one town, as I believe exists in certain cases here, is it practical to consider that the volume which has been going to those five or six terminals can be used in regard to one—can be contained, shall I say, in one terminal?

A. No; it would not be possible.

Q. Where a large number is cut down to a single terminal, or two terminals, it would necessitate considerable enlargement.

A. Well, it is very hard to answer that question along general lines, because each situation is different. In New York City, as an illustration, where there are at present seven terminals of the eight carrier companies, it is very likely that eventually that number would be reduced to perhaps two or three, and the location of the terminals would be changed. Presently, the terminals of all carriers, I would think, up to probably 85 percent, are concentrated in lower New York. It may be altogether possible that one terminal would be located on the Jersey side, that being a more logical place to break freight. It may very well be that one would be located, perhaps, in the upper Bronx, and one in Manhattan.

Q. Which carrier of the eight does not have a terminal in 1143 New York?

A. McCarthy.

Q. And may I refresh your memory by saying that possibly Transportation does not have one also; so that it would be six instead of seven?

A. Oh, yes; that is correct.

Q. Will you explain how that saving—I believe it was \$250,000 for the first year—will be accomplished?

A. It will be accomplished by a reduction, eventually, in the number of terminals, by an elimination of the overhead of a terminal, limited principally to a reduction in rent and supervision—

Q. Excuse me. I believe this was stated to be the saving which would be realized in the first year.

A. That is correct.

Q. Could you bring it down a little closer to the fact than to say "eventually," which sounds like it might be in some subsequent time.

A. Yes. I say "eventually" because our best judgment is that the saving that can be achieved is going to exceed \$250,000 by several times.

Q. But that does refer to the first year of operations?

A. I can only answer your question as to the \$250,000 to be saved within the first year by having available that which I have not available, which is a rather detailed study of it, and which 114 is in New York. It is a treatment by terminal and by city.

Q. Referring to the application contained in Docket MC-F-1613, and the number of shares which you have subscribed to, which is 31,240, and assuming the actual value of the common stock concurrent with its conversion value, or \$25 a share, the stock would be worth to you considerably more than its par value, would it not?

Mr. SULLIVAN. Excuse me. I am afraid I will have to object to that on the ground that it is not within the scope of the proceedings. It calls for a guess. It serves no useful purpose.

Mr. MACDONALD. I am afraid that objection is very general, and he is merely trying to protect the witness from having to answer, and that is a question which it might not be of interest to the applicant to have him answer.

Exam. BAKER. Can you state, Mr. Macdonald, how an answer to that question would aid the Commission in determining whether the proposed transaction would be consistent with the public interest?

Mr. MACDONALD. I can, Mr. Examiner, but I would prefer to bring it out by question and answer. I think that is the way it should be brought out, but I can state for the record what my purpose is in this line of questioning and what I expect to prove, if you would rather have it that way.

Exam. BAKER. I would prefer that you do that.

1145 Mr. MACDONALD. O. K. It is my purpose to establish by this witness that at the capitalized value of the stock issued to him at \$1 par, and using 10 percent as the basis for capitalization, the value of that stock will eventually achieve not the stated \$700,000 total par value, but a value in excess of \$20,000,000, and when the preferred is added to that the total capitalization of the company would be over \$30,000,000, and the value of this stock, for which Mr. Seymour is paying \$31,240, could, on that basis, be equal to three-quarters of a million dollars. I wish to ask the witness what service he has rendered for such a return if it could be assumed that the stock would eventually reach a value of this type?

In support of that, I wish to show that the stock in the last company was to be marketed at \$22 a share, and that the difference in the companies is reflected by the difference in the amount of preferred, largely, having no relation, insofar as earnings are concerned, to the common. I wish to show further that the Transport Company, which is 100 percent owned by Kuhn, Loeb & Company, as I understand it, who was given 9,000 shares of \$1 par for—and I quote from the application contained in Docket MC-F-1613—certain accounting material, engineering surveys, appraisals and maps, and transcript of testimony, et cetera, developed and

acquired by Transport Company in conjunction with the  
1146 attempted merger in 1940, and so forth.

I wish to determine what those materials were, whether they were not materials concerning the 28 operating companies and other nonoperating companies concerned in the original application, and, if so, whether this was not a nominal consideration for the 9,000 shares of stock which, on the same capitalized basis as we used for determining Mr. Seymour's increment in value, would amount to a quarter of a million dollars, which Kuhn, Loeb & Company expended in organization expenses in the last application, and for which they received no return, and the net result is, so far as Kuhn, Loeb & Company is concerned, that it is being paid out of this application, in our opinion, for its loss in the organization, or attempted organization, of the last company. We wish to—

Mr. SULLIVAN. I object to his referring to the last company all the time.

Exam. BYKER. Mr. Sullivan, allow him to complete his statement.

Mr. SULLIVAN. If anyone would call me names, I wouldn't have to stand it, and I think he means it in the same way. I think that is what he means by calling it the "last company."

Exam. BAKER. You may proceed.

Mr. MACDONALD. Mr. Sullivan at various times has stated that there are no relations between the companies, and it was  
1147 part of my offer to prove that, so far as the promoters were concerned, there is continuity, as part of this organizational expense, and certainly \$1 par is not all it is going to be worth. There might be some increment which will affect and ultimately control the company, and therefore be in the public interest.

Exam. BAKER. Mr. Macdonald, I will consider your statement as an offer of proof, and will sustain the objection of Mr. Sullivan.

Mr. MACDONALD. I have further questions.

By Mr. MACDONALD:

Q. Mr. Seymour, is it contemplated that any of the issue of \$1,500,000 preferred, to be offered to the public, will be offered to any group or groups of shippers or companies otherwise concerned in the transportation field?

A. I have not the slightest idea who may buy the stock, and there never has been any conversation, up to this point, on the subject. Insofar as shippers are concerned, I can certainly say that the answer is "No." Certainly I have never talked to any shipper, and I know of no one in the group that has ever done so, and such a thing has never been contemplated.

Q. Are there any commitments, formal or informal, with what are called the Wilmington interests, Laird & Company, and other investment brokers and bankers?

A. There has been no discussion with anyone relative to the sale of the stock.

1148 Mr. SULLIVAN. Would you read the question back? I think you meant to answer categorically, but I would like to have it read back.

(Question read.)

A. No.

Exam. BAKER. In connection with my ruling, Mr. Macdonald, I would like to point out that the facts cited by you, most of them, are already in the record, and I, of course, will not prevent you from arguing such matters as you deem appropriate on brief in that regard.

Mr. MACDONALD. Thank you.

The WITNESS. May I make this statement off the record? I certainly do not want—

Exam. BAKER. I prefer any statement to be on the record.

The WITNESS. All right. I was going to say that I would very much like to answer the question.

By Mr. MACDONALD:

Q. Mr. Seymour—

Mr. SULLIVAN. Wait a minute. We will remove our objection, on Mr. Seymour's statement.

Mr. MACDONALD. I am sorry, but in view of the fact that I was not allowed to put this in in question-and answer form, it is not fair to me to make me disclose my whole line of questioning, and then let the witness answer, instead of answering my question. I think the attorney for the applicant should be made to stand on the objection.

1149 Mr. SULLIVAN. What are we doing—a little wire tapping around here? Is there some secrecy there? We are looking for the facts in this case, and everything is above board, or isn't it? Do I understand he is just proceeding to hope to trap him into something that is not true, so that he could assume that those facts are so? What is wrong with coming out and saying it, I cannot see. That is not what he is here for. At least, we pay the Government, and the Government pays him.

Mr. MACDONALD. I agree with Mr. Sullivan that we are looking for the facts, but I want to develop them by my questions.

Exam. BAKER. Let us confine ourselves to the matter before us. Do you desire to pursue your line of questioning in view of the withdrawal of the objection?

Mr. MACDONALD. Very well. I will.

By Mr. MACDONALD:

Q. I will ask you, Mr. Seymour, that assuming the value of this common stock issued at \$1 par, equal to that which was also issued at \$1 par in the last application, Docket MC-F-1223 and related dockets, which value was to be \$22 to the public, whether you consider the increment in value which you will receive for the shares you have subscribed to a proper return for the services you have rendered in this organization?

1150 A. Well, in the first instance—and I am no financial student and I am not a promotor—I don't know that there is anything particularly in common with the ultimate value of this common stock and the conversion price that has been stated, because, in the first place, I had nothing to do with the conversion price written off. It was done by the attorneys who incorporated the company, and it was my understanding it would very likely be necessary, if this application be approved, and if the Commission decided that the company needed the \$1,500,000 of working capital, we would probably then, if such arrangements could be made to sell the stock—we would then have to submit to the Commission, I suppose, an underwriting agreement, and I had no notion at that time whether the conversion is going to be five for one or eight for one, or what it may be.

Q. Well, I will ask you to reply to the question as I stated it.

A. All right.

Q. Which I believe you probably intended, but missed in your answer.

A. Well, yes; my opinion is that the stock is not going to have a value of \$20 or \$25. That is my personal opinion.

Q. I will ask you the question which Mr. Wiprud addressed yesterday to Mr. Reicher, as to what percent, as a figure, could be as reasonable a figure as 10 percent to choose for estimating the return which you would receive out of this company on a capitalized basis?

1151 A. Well, I have never given that reasoning any consideration. You mean, I assume, whether an 8 percent return on capital, or 10 percent or 5 percent, or what is my opinion as to what is an adequate return?

Q. Yes.

A. I don't know. I would be of the opinion that if, through good weather and foul weather, a company could earn a return of 10 percent, they would be fortunate.

Q. Would you consider the company to be a worth a value capitalized at 10 percent on earnings?

A. Well, I will have to answer that question by saying to you that the capital structure of the Associated Transport was set

up on an entirely different basis of reasoning. It was set up on the basis of reasoning that, insofar as shippers are concerned, they would like to see a reasonable and modest capital structure, because I know that shippers believe that ultimately, or at least they hope that the rate structure is going to be based upon capital, and insofar as the decisions of the Commission are concerned they have indicated a desire in that direction.

Q. Well, let us put it this way: After a payment of the dividend on the preferred of \$360,000 a year, there will remain sufficient profit available for dividend payment, according to the balance sheets which have been shown here, to pay the common stockholders almost twice the value of their common stock 1152 each year.

A. If you paid out all the earnings?

Q. If you paid out all the earnings.

A. Yes, sir.

Q. Figuring the net worth of the company on a capitalized basis, not of physical assets, but of capitalized earnings, what would your estimate of the value of the common stock of this company be?

A. I do not believe that my answer to that question would produce anything, because it is a matter of calculation that I am not even familiar with.

Q. Would you say, Mr. Seymour, that the common stock today has a value far in excess of its par value?

A. I think that common stock generally has a value of something between three or four times earnings in a business of this character, or perhaps five.

Q. Three or four percent, approximately.

A. Yes; I said I thought that the common stock value would be based on three or four times earnings.

Q. Well, having in mind these figures, Mr. Seymour, which are of record, the \$1,405,528, which, according to the exhibit in the original application, not the revised figure, was the amount available for common stock dividends, and the figure of \$1,325,000

before taxes, which was the total of your estimate of savings 1153 ings which could be obtained by the merger of the operating companies and the further saving which you testified would result from a greater utilization of equipment and reduced the freight handling, the sum total of these items would indicate, would it not, that the common stock has a substantially higher value than its par value?

A. It does, if we want to presuppose that the cost of doing business won't go up, that taxes are not going to increase, and all other things, that are certainly going in that direction.

Q. Was it not true in the former proceeding involving the Transport Company that this \$1 par value common stock was given a value of \$22 per share for sale to the public?

A. Well, I could only answer that by giving you my opinion. I remember when that price was put on the stock, but I certainly never agreed with the bankers that they were ever going to sell it at that price.

Q. How do the companies concerned in this merger compare, as to their percent of earnings, in relation to the total operating revenues, with the eight terminal companies remaining out of the 28 over-the-road companies in the original application?

Mr. SULLIVAN. As to which year?

Mr. MACDONALD. As to the year 1939, or any year which the witness chooses to base his figures on.

A. I cannot answer that. I think, perhaps, Mr. Reicher might be able to.

1154 Q. Well, it is sufficient to demonstrate——

A. No, I——

Q. If you would like to——

A. I would like to try to answer the question.

Q. Go ahead.

A. My very best recollection is that the earnings after taxes of the 28 companies were about \$2,000,000; that is, the 28 over-the-road companies. Three truck leasing companies that were included have contributed another \$1,000,000 after taxes, and now, trying to answer your question, in 1939 these eight companies would represent something between 50 and 60 percent—probably more nearly 60 percent—of the earnings of all the companies.

Q. Well, that is a satisfactory answer, if you want to save Mr. Reicher the trouble.

A. That is my very best recollection.

Mr. SULLIVAN. I would like to have Mr. Reicher check it.

The WITNESS. Yes.

Mr. MACDONALD. He agrees with my figure.

Mr. SULLIVAN. Have you checked it?

Mr. MACDONALD. Yes.

Mr. SULLIVAN. If you will tell me that is O. K., I will not bother with it.

Mr. MACDONALD. I would rather not have my figure as of record. It is not based on accounting methods.

1155 Exam. BAKER. Let us proceed.

By Mr. MACDONALD:

Q. I ask you, Mr. Seymour, whether you still are an officer or director, or both, of the truck leasing corporations which you were connected with during the time of the last application?

A. I am a-director of Metropolitan Distributors.

Q. Are you also an officer or director, or both, of Yellow Products Company?

A. No; not now. I resigned last fall.

Q. By what method was the value placed upon the common stock subscribed to by Kuhn, Loeb & Company to compensate them for the records, and so forth, which sold for 9,000 shares?

A. That was a matter of negotiation primarily between others and myself. Several of them are in the room, but it was a horse trade matter that went on over some couple of months.

Q. The transcript which was included in that list of things purchased, and which was stated to be in the public interest, was filed with the Commission, was it not?

A. Will you repeat that question?

Q. The transcript which is stated to have been included in the materials for which this 9,000 shares of stock was exchanged, was in the public record room of the Interstate Commerce Commission files?

A. That is right. That was the only reason, as I understood it, that we were able to buy it for 9,000 shares.

1156 Q. And the maps which were also listed were also in the applications, were they not?

A. The answer, very frankly, insofar as the material of the Transport Company is concerned, is that we certainly took that position with Kuhn-Loeb. The fact likewise remains, however, that there is some reasonable decency, and you cannot go ahead and use other people's material, that they have paid for, or at least these gentlemen did not want to do it.

Q. Can you estimate, in terms of dollars and cents, what that material was considered to be worth?

A. The auditing bill last year was roughly \$90,000. The surveys that were made cost about another \$80,000 or \$90,000, and much of the other material. We wound up with a cost, I would say, of something around \$200,000.

Q. Can you state what the value of this material was to the applicants in the present proceeding?

A. I would think that Mr. Reicher, as one of the men who received a very substantial part of it, could undoubtedly put into the record the material which he has used, and which does not have to be done again. There is no need of making the 1939 audit again, for one thing, which had to be done for this application.

Q. Can you state whether the audit for the date upon which the year opened, used as a basis for measuring value could be used intact from the last application, in this application, so far as the companies here are concerned?

1157 A. I cannot answer that. I know that 1939 could be used.

Q. On another subject, Mr. Seymour, is it the intention of the officers of this company, if the application is granted, to retain the Brown Manufacturing Company, United Sales Company, and other subsidiary companies in the corporate structure of the Associated Transport Company?

Mr. SULLIVAN. Mr. Wiprud asked him about that when he was on the stand before, and he answered, and I had no objection to his answer.

Mr. MACDONALD. The witness is in between. They have intimated they do not know.

The WITNESS. Well, I know. Southern New England and Conger and United Sales, all of them, whatever the number is, four or five of them, will be discontinued. Negotiations are presently on looking to the disposal of Brown Equipment.

By Mr. MACDONALD:

Q. I ask you to state for the record, Mr. Seymour, what advantage to the public will result from the inclusion of McCarthy Freight System in this merger?

A. Well, the basis upon which this application was finally put together was on what we consider sound reasoning. In the first place, all of these gentlemen who are here felt, from the standpoint of their own individual future security, it was advisable to get together with other good substantial carriers.

Q. Excuse me, Mr. Seymour. I am speaking of public benefits.

1158 A. All right. And getting together—well, I had better stop at that point, because the specific answer to your question is that in so far as McCarthy is concerned, we feel that McCarthy, in combination with Consolidated and New England, will make it possible to render a better service to the shippers, and they feel that way, than they are presently able to render.

Q. Does not McCarthy duplicate 100 percent the eastern operations of Consolidated?

A. I think very close—90 percent.

Q. Will you state, then, how that would be of advantage to the shippers?

A. The advantage to the shippers I can state in one specific way. It comes about through the advantages that accrue by getting together men of this calibre, who will be acting collectively, giving all their time and attention to the business—good service, described in many ways, and not only one specific way.

**Q.** It cannot really be reduced to concrete terms, the advantage which will accrue to the public, so far as the merger of these two companies is concerned, can it?

**A.** Well, the first advantage to the public is that it is only going, in my opinion, to be a combination of these companies, a relatively limited number of companies, and making it possible for the elimination of a very considerable amount of  
1159 duplication of facilities, and something of that kind must certainly be done to offset the constantly increasing cost of doing business.

**Q.** Do you mean that the elimination of facilities of freight lines would be of advantage to the shippers?

**A.** Costs. I am talking about the elimination of facilities, terminals, and the duplication of effort—all of the things that can be done by these companies getting together—reduced costs of doing business.

**Exam. BAKER.** We will take a recess here for 10 minutes.

(There was a short recess taken.)

**Exam. BAKER.** Come to order, please. I would like to call the attention of everyone to the fact that any decision rendered by the Commission must necessarily be based on the record here made, and it is to the interest of everyone to see that the record is a correct transcript of the proceeding. Therefore, I am going to ask that everyone speak loudly and distinctly, so that there will not be any question but that the Reporter will understand. You may proceed.

**Mr. MACDONALD.** I would like to have the Reporter read the last question and answer before the intermission.

**Exam. BAKER.** Will you read that, please?

(Record read.)

By Mr. MACDONALD:

1160 **Q.** Would you say that this is a reduction in cost to the operator or to the shipper?

**A.** Well, it is only by a reduction in cost of doing business that it is going to be possible to even hold the rates where they are, and certainly to reduce rates.

**Q.** You do envision, then, an eventual reductions of rates?

**A.** I cannot say that I envision it, but I certainly would say that if there is not some way found to reduce the cost of doing business, such a thing is never going to be possible.

**Q.** In the immediate future, the advantage of any reduction of cost would be to the operators, would it not?

**A.** Sure.

**Q.** And it would only be possible to pass that on to the shippers in the form of reduced rates, would it not?

A. That and the ability to render a better service.

Q. And by "better service," you mean in point of time and all of the various other elements that you have mentioned in your previous testimony?

A. I mean that a comp'ny that is making money can do a better job of rendering service than a company that is not making money. There are many things that have to be done in this business, and it takes money to do it.

Q. Referring for a moment to the Brown Equipment Company, which you stated it is the intention of this Associated Transport Company, when and if the application is approved, to sell, would you state for the record, please, whether there will be 1161 in the directorate of the Brown Company any directors or officers who are concerned in the Associated Transport application?

A. If it is sold, it will go lock, stock, and barrel, and there would be no remaining connection.

Q. Will you state for the record, please, why, Kuhn, Loeb & Company was given stock rather than cash for the materials which they sold to the Associated Transport, Inc.?

A. It is very simple to answer—because there was not any cash to pay with.

Q. It could not have been done on a basis of debt to be paid out of the assets to accrue when the organization was completed?

A. I did not negotiate the deal with Kuhn-Loeb. Mr. Sullivan did, because they made demands, and that made it necessary for the attorney to move in, but certainly they would not have been willing to have gambled.

Q. The subscriptions listed in Applicant's exhibit in Docket 1613 were not paid for in cash, then?

A. I don't know what—

Q. Referring to the list of subscribers and the amounts of stock they purchased on Exhibit A-1 (D).

A. Yes; that is correct.

Mr. SULLIVAN. No. He said they were not paid in cash. You misunderstood him.

1162

By Mr. MACDONALD:

Q. I say they were not paid in cash, referring to your statement that there were no cash assets.

A. It was paid in cash.

Q. Why was not this cash available for payment, then, to Kuhn, Loeb & Company for the materials?

A. Because we knew what it was going to cost to prosecute the application, and we knew that the money would not stretch. As a matter of fact, we were right.

Q. Then, provision was only made for organizational expenses other than purchase of materials from Kuhn, Loeb.

A. That is correct. As a matter of fact, there still is an insufficiency of money.

Q. Will you please state for the record whether there is any agreement between you and any other persons as to the divisions of your holdings in this company—your holdings?

A. One exception. I have agreed to pay to Mr. Charles Cotterill 2,900 shares of stock.

Mr. SULLIVAN. Why was that?

Mr. MACDONALD. I am sorry, Mr. Sullivan, I am not through yet.

By Mr. MACDONALD:

Q. Will you state what the consideration was for the agreement to transfer those shares to Mr. Cotterill?

A. Mr. Cotterill was the attorney in the matter of the Transport Company last year, and he devoted all of his time to it, 1163 and he has told me, and I have no reason to question that, he did lose most of his practice, if not all of it. I just, under the circumstances, felt sorry for him, and as a result of the conversation we had I made that offer to him, and it was handled in that way.

Q. Do you know whether or not Mr. Cotterill has any agreement as to further distribution of those shares which he will receive from you?

A. I don't know, but I am sure he has not.

Q. Can you put any valuation on that stock, in terms of dollars and cents?

A. If the application is not approved, it is worth nothing. If it is approved, I can only guess at it. I think the stock would be worth eight or nine or ten dollars a share.

Q. Referring to the—

A. At some time.

Q. Referring to the subject which was the point of my original question, that is, the need for additional operating capital, you were going to secure the figures for the salaries and bonuses paid off during the last year.

A. You want the figure combined?

Q. If you have it broken down, I would like to get it that way.

A. This is combined. Do you want it broken down as between bonuses and salaries?

1164 Q. No.

A. Arrow, \$46,000; Barnwell, \$43,000; Consolidated, \$25,000; Horton, \$40,400.

Mr. SULLIVAN. How much?

The WITNESS. \$40,400. .

Exam. BAKER. Mr. Seymour, these are merely the bonuses that you are reading; is that so?

The WITNESS. Salaries and bonuses.

Exam. BAKER. Mr. Seymour, if you do not know from your personal knowledge, perhaps you had better not testify.

The WITNESS. I think there is an error there.

By Mr. MACDONALD:

Q. Mr. Seymour, do you know what Mr. Horton's salary has been for the last year?

A. Yes; it has been \$74,000 for several years.

Q. And it would now drop to \$25,000, would it not?

A. Thirty-six thousand dollars.

Q. Thirty-six thousand dollars?

A. Yes.

Q. In total, there are going to be considerable nonrecurring expense items drawn from salaries and bonuses, are there not?

A. Yes.

Mr. SULLIVAN. Excuse me. I could not hear that question. Will you read it?

(Question read.)

Mr. SULLIVAN. All right.

1165 Exam. BAKER. Did you understand the question, Mr. Seymour?

The WITNESS. I think I did. Perhaps I don't understand the—

Mr. MACDONALD. Mr. Seymour and I understand each other. It is a matter of Mr. Sullivan—

Mr. SULLIVAN. Well, now—

Exam. BAKER. I want the record to be clear.

The WITNESS. My understanding of the question is that there had been certain salary reductions agreed upon, and they have been put in as nonrecurring expenses.

By Mr. MACDONALD:

Q. These items could in the past have been left in the business had the officers, who were also the owners of these companies, desired; could they not?

Exam. BAKER. Mr. Macdonald, I do not see the point of going into what might have been. We have a situation before us, and the only question now is to deal with the present situation.

Mr. MACDONALD. Mr. Examiner, my only point is that the present situation is reflected upon the books of the company, as adjusted by the auditor. The condition of these books, when he got them, was, as a result of the operation of these individual companies, largely

family or one-man owned, and consequently reflected a different picture than might have been the case if it had been a widely distributed stock ownership.

1166 **Exam. BAKER.** Both of those pictures are in the record, though, are they not?

**Mr. MACDONALD.** In that case, I do not wish to pursue that subject any further.

**By Mr. MACDONALD:**

**Q.** Will you state for the record, Mr. Seymour, what is the intention of the officers of the Associated Transport, Inc., in regard to using the \$1,500,000 preferred stock issue request here, if it is allowed to issue such stock.

**A.** Well, the principal reason is because, if we do not have an adequate working capital, if we do not have a reasonable ratio of assets to liabilities, or at least two to one, it is not going to be possible to secure equipment money at the low interest rate that we can secure it at if we are substantially stronger.

**Q.** Do you plan, then, to go into an extensive purchase of new equipment?

**A.** We have no reason to believe that the volume increase of the companies, if Associated Transport becomes reality, will be any less than it has been with these companies in prior years.

**Q.** Is it planned to use parts of this sum for any other purposes than the ordinary needs of daily receipts and expenditures?

1167 **A.** It may very well be that the board of directors will decide to clear up outstanding mortgages and take care of other obligations. I don't know in detail.

**Q.** Has it been considered to use any portion of this to purchase control or purchase entirely any other motor truck companies?

**A.** There is no intention to acquire any other property—any other carrier property or any other property.

**Q.** Mr. Seymour, is it the intention of the officers of Associated Transport, Inc., to put in joint rate schedules with railroads or with other carriers more extensively than the individual companies have done in the past?

**A.** I have not the slightest idea.

**Q.** There has been no consideration given to the rate problem?

**A.** I individually have given no attention to it, and the last six months I have had no time. It is very difficult to put together a business of eight rugged individualists, where they are bringing everything into a common pot. It does not leave time.

**Mr. MACDONALD.** That is all I have.

**Mr. SULLIVAN.** I have a few questions.

## Redirect examination by Mr. SULLIVAN:

Q. Mr. Seymour, when these eight "rugged individuals," as  
you say, were attempting to put this proposal together dur-  
ing the spring of this year, were there used at that time  
many audits and books and records, etcetera, that were  
available through Mr. Reicher's office, or through having been  
offered in evidence in the Transport case, which came into the  
possession of us during that hearing?

A. Yes.

Q. And was it the fact that they were used, and being used,  
as of that time, the reason that no previous attempt, for a financial  
consideration, was made to acquire them?

A. That is right.

Q. And then did there come a time when there were attempts  
on the part of the Transport Company, who were the owners  
of them, to do something about them, or else—

Mr. MACDONALD. I object to the form of these questions as  
leading and to the subject of them as one which Mr. Seymour  
testified he was not a party to the negotiations concerning.

Mr. SULLIVAN. I am not dealing with the negotiations.

Exam. BAKER. Complete the question.

Mr. SULLIVAN. Would you read the question?

(Question read.)

A. The answer is "Yes."

## By Mr. SULLIVAN:

Q. And was that the time that I, as attorney, was directed to  
go to—

Mr. MACDONALD. I object again. All of these questions are  
leading.

Mr. SULLIVAN. He made him his witness as to those  
things. That was not cross-examination. He made him  
his witness on those questions.

Mr. MACDONALD. Mr. Sullivan opened the field for cross-ex-  
amination by his own words.

Exam. BAKER. Mr. Sullivan, complete your question. Do not  
answer it, Mr. Seymour, until I pass on the objection.

(Question read.)

## By Mr. SULLIVAN:

Q. To deal with the officers of the Transport Company with re-  
spect to the records, and their attorney.

Exam. BAKER. He may answer that.

A. Yes.

By Mr. SULLIVAN:

Q. And, as a matter of fact, were the negotiations conducted between myself and the attorney for the Transport Company?

Exam. BAKER. I think you can phrase that question a little differently.

Mr. SULLIVAN. Well, all right.

By Mr. SULLIVAN:

Q. If you know, whom would the negotiations be between, as covered in the last questions?

A. Between yourself and several members of Kuhn, Loeb & Company and Mr. Atkins, of Cravath & Company.

Q. And what is Mr. Atkins' business?

A. He is an attorney.

1170 Q. With respect to New England, what can you say as to the service of McCarthy and Consolidated over the New England territory with respect to, let us say, the quantity and quality of the service rendered?

A. McCarthy is weak in Connecticut, and Consolidated is weak in the north and east end of McCarthy's territory.

Q. Are there substantial areas in New England where it may be said that the competition between them is not particularly severe?

A. That is right.

Q. For the reasons you gave in your previous answer?

A. Yes.

Mr. SULLIVAN. That is all the questions I have.

Exam. BAKER. Are there any further questions of this witness? Mr. Seymour, could you be a little more definite as to the proposed use of the proceeds of the \$1,500,000 preferred stock to be sold? Do you have any definite plans with respect to the use of those?

The WITNESS. Well, Mr. Examiner, the difficulty, in the first instance, is that there is a very, very acute shortage of cash and working capital in the companies individually and in the companies collectively. The last time I looked at it, it was somewhere between \$450,000 and \$500,000. I certainly feel that there

1171 is no security that the company can have, or the Associated

Transport Company can have, unless they are in a better financial position than the constituent parts presently are, because it is a fact, even though they have weathered some severe storms over the past couple of years, it is my opinion that they can still be blown away rather easily. There is a great deal of concern and worry on the part of all the interested people, those who are presently the heads of these companies, not because they

are pessimists, because they are not, but there is some concern that ahead of us is an inevitable down swing in business as a result of economic conditions generally, and it is the desire on their part that they be better fortified against that future uncertainty, and certainly, so far as the shipper is concerned, and in the desire to render a better service, it takes more money to do it, and if the demands for increased service continue, the \$1,500,000 is going to be inadequate, rather than more than adequate, to meet the demand for putting into the service increased equipment.

Exam. BAKER. So you do propose to use it partly for the purchase of new equipment; do you?

The WITNESS. Well, yes, I think that some of it will be used, but without a strong financial position, something approaching at least a ratio of two to one, it is going to be impossible to finance equipment on the basis of equipment trust—equipment trust  
1172 certificates, spread over anything like three or four years.

I know that, because I have had those conversations with bankers—commercial bankers.

Exam. BAKER. With respect to the value of applicant's common stock, that value will necessarily be dependent upon the future success of the applicant, will it not?

The WITNESS. That very definitely is so, Mr. Examiner.

Exam. BAKER. And the value is dependent upon what the public is willing to pay for that stock; is it not?

The WITNESS. Yes, indeed.

Exam. BAKER. Those are all the questions I have.

By Mr. SULLIVAN:

Q. When you speak of the possibility of using some of this \$1,500,000 to purchase new equipment, do you mean that the money would be used directly to purchase new equipment, or indirectly to pay up the past accounts and improve the financial condition, so that you will get better financing terms on the new equipment?

A. In the main, the latter.

Q. As a result of some studies that you have given to the matter, are you familiar with the terminal situation, the terminal facilities that are presently available to these companies?

A. Yes; I am.

Q. And what can you say as to the need of improving the terminal facilities?

A. Eighty-five percent of the terminal facilities that are presently owned or leased by all of the companies are totally  
1173 unfit and unsuited for the business.

Q. What is the general condition now about going out and getting terminals, modern terminal buildings built for you through the capital of someone else?

A. It is just next to impossible.

Q. Is there a situation also with respect to being evicted from terminals at the present time, because the owners want them for other purposes, and under a clause in their lease they cancel their lease or sell the building?

A. They have not less than fifteen or twenty separate instances where it is nip and tuck as to whether the operator is going to be in his terminal or out in the street, day by day, now.

Q. What can you say as to the effect of those conditions which you have just described upon the need for improving the financial condition of this company, so that it can do something about provided proper and adequate terminal facilities?

A. I have had a conversation within the last two or three months with a large builder, who happens to be located on the Pacific Coast. He is willing to build terminals for the Associated Transport, if it be put together, and if it has some financial substance, on an advantageous basis.

Q. So that he would build them and they could be leased under a long-term lease.

A. That is right.

1174 Q. What can you say as to the effect of having a modern terminal on reducing costs and improving the service to the shipper?

A. I suppose it is comparable, in Manhattan, of either being on Broadway or being on Tenth Avenue, to a degree.

Q. Do you mean because of a lack of facilities that would be available, as between the two places?

A. Well, in the first instance, 85 percent of the terminals presently employed are not constructed for the business. In the main, they are either converted garages, or foundries, car shops, and such things as that. There are very few terminals that have proper facilities for the movement of freight. There are very few terminals—as a matter of fact, the industry has not yet moved to a development, in so far as terminals are concerned, in the matter of conveyors and such things as that. The freight is handled so much now because of unsuited facilities that the freight is very nearly worn-out in its handling.

Q. Were you here when Mr. Horton testified?

A. I was; yes.

Q. Did you hear his testimony with respect to the fact that terminals built specifically for truck use produced economies and faster and better service?

A. I did.

Q. Do you agree with his testimony in that respect?

A. I certainly do.

1175 Q. Is there difficulty at the present time in going out and spending money to improve these old structures, such as you have described, converted garages, foundries, and the like, because of the situation described earlier as to the relative short terms of making leases, or the sale provisions that the landlord has?

A. Well, we are very rapidly reaching a point where actual construction of terminals designed for this business is going to have to be smoothed out.

Mr. SULLIVAN. That is all I have.

Exam. BAKER. Witness excused.

(Witness excused.)

Exam. BAKER. We will adjourn until 10 o'clock Monday morning.

(Whereupon, at 5:20 o'clock p.m., September 6, 1941, the hearing was adjourned.)

1176 Before the Interstate Commerce Commission

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

HEARING ROOM "B."

INTERSTATE COMMERCE COMMISSION BUILDING,

Washington, D. C., September 8, 1941.

Met, pursuant to adjournment, at 10 a. m.

Before VERNON V. BAKER, Examiner.

Appearances: (The same as heretofore noted.)

Additional appearance: James A. Glenn, 736 Bowen Building, Washington, D. C., appearing for International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America.

1178

PROCEEDINGS

Exam. BAKER. Come to order, please. You may proceed, Mr. Sullivan.

Mr. SULLIVAN. I will call Mr. Mead.

JOSEPH P. MEAD, being first duly sworn, testified as follows:

Direct examination by Mr. SULLIVAN:

Q. Will you state your full name, Mr. Mead?

A. Joseph P. Mead.

Q. Where do you reside?

A. 22 Roseville Street, Buffalo, New York.

Q. What is your business, Mr. Mead?

A. I am assistant traffic manager of the Moran Transportation Company.

Q. You have been connected with that company how long?

A. For 10 years.

Q. Prior to your employment by the Moran Transportation Lines, did you also engage in transportation work?

A. Yes; for two years I was with a boat line, and for nine years with a railroad.

Q. In what general capacity were you employed by the railroad?

A. Well, I was in the operating department, and I was in the freight audit department, and also in the traffic department.

Q. That was the New York Central Railroad?

A. Yes, sir.

1179 Q. What was the boat line?

A. C. & B. Transit Company.

Q. And you have held various positions with the Moran Company?

A. Yes, sir.

Q. Will you tell us some of the different positions you have held?

A. Well, I was in the operating department, I was assistant to vice president, was president of the Blue Bus Freight Lines, which was a subsidiary of Moran, and which has since been taken over, and I have been in the traffic department for the last three years.

Q. Are you familiar with truck operations, transportation and rate matters, and the like?

A. Yes, sir; I would say I am familiar with every phase of it.

Q. You are also a practitioner before the Interstate Commerce Commission?

A. Yes, sir.

Q. Your duties require you to travel rather extensively throughout the Moran territory?

A. Yes, sir.

Q. Incidentally, you also set up and you managed the claim department, did you not?

A. Yes, sir.

Q. Mr. Mead, was there a time when you prepared an exhibit, which has been introduced here under the number of Ex-  
1180 hibit No. 4, at the request of Mr. Altwalter?

A. Yes, sir; I did.

Q. Did that contain a list of motor truck carriers and car-loading companies operating in Moran territory?

A. Yes, sir.

Q. From what sources did you get the names that you included in that document which was later introduced here as Exhibit No. 4?

A. From my own knowledge. Due to hearings that I have attended, I have approximately 200 files, some of which are competitive with us now, and as to some of which the disposition has not yet been made, and also from actual knowledge of our competitors.

Q. Were there any companies included in the application that you knew nothing about of your own personal knowledge?

A. No; there were not. There is only one in here that I did have some doubt about, and that was Ernest Bradley. I am unable to state just where that information came from; unless the instructions I gave to those who drew it up for me, may have included it in there erroneously, but I think that Ernest Bradley, since checking the Commission's files, is a competitor.

Q. It is now, but you did not have knowledge of that before?

A. I did not have knowledge of that before.

Q. But you have since that time checked the files of the  
1181 Commission?

A. That is right.

Q. Now, Mr. Mead, did you last week prepare a chart or graph form the files of the Interstate Commerce Commission with respect to some of the carriers listed on Exhibit 4 that we have just been discussing?

A. Yes, sir.

Mr. SULLIVAN. I would like to have the document, Mr. Examiner, entitled "Partial list of motor carriers serving same territory as M. Moran Transportation Lines, Inc.," which happens to be the same title as the other exhibit had, and which is in a graph form, marked for identification.

Exam. BAKER. The document described will be marked for identification as Applicant's Exhibit No. 17.

(Exhibit No. 17, Witness Mead, marked for identification.)

By Mr. SULLIVAN:

Q. I will ask you, Mr. Mead, to look at Exhibit No. 17, for identification, and tell us how you prepared that exhibit?

A. This exhibit was prepared from the actual dockets on file with the Interstate Commerce Commission, and this is only a partial list, because there were over a hundred dockets that we could not get, due to the fact that they were out in the field or in the hands of examiners or in the Secretary's office.

1182 Q. Excuse me, Mr. Mead. I want to go back over that so it will not be confusing to anyone reading it. You mean a partial list of the lists that were contained in Exhibit No. 4, previously introduced in this case?

A. That is right, sir.

Q. Did you attempt to get the dockets in all the others that were listed in the original exhibit?

A. Yes.

Q. No. 4.

A. Yes.

Q. You say there were a hundred and some out of the two hundred and some that were in the list that you were unable to get: is that right?

A. Yes, sir.

Q. Did you make out cards requesting those dockets?

A. Yes.

Q. And the cards were returned to you, with the explanation that the dockets were not available or present in the Commission's files; is that it?

A. Yes, sir.

Q. Do you have the cards with you?

A. I have them in my brief case.

Q. And perhaps you also had—I do not know that you did—a few that were not on the original Exhibit 4, that you have thought of since?

1183 A. Yes; I did. In checking through, I find that some I had omitted, and also a few in here that I find that their actual operations were intrastate; so I did not include them in this list.

Q. While it is not an intrastate operation, I think we can go into the situation in New York State with respect to intrastate operations. You are also handling the interests of the Moran Company with respect to intrastate operations?

A. Yes, sir.

Q. Before the Public Service Commission of New York State?

A. I handled every application before the Public Service Commission.

Q. And you also appeared as a witness in the applications of other carriers?

A. I have; yes, sir.

Q. Will you tell us how many applications for common carrier rights and of motor trucks there are pending before the New York State Public Service Commission?

A. There were 4,000 applications, and I understand that it has now boiled down to about 2,500, due to exemptions.

Mr. MACDONALD. Mr. Examiner, I object to this testimony, on the ground that the records speak for themselves. He has not examined the records, and this is hearsay evidence, as far as the records are concerned. He said he "understood" thus and so.

He is guessing.

1184 Mr. SULLIVAN. I will agree that that part of his answer be stricken out, and I will ask him how it is that he understands it.

Mr. MACDONALD. We have no objection if a proper foundation is laid.

A. Commissioner Brewster told me that last week in Syracuse.

Mr. MACDONALD. I object to that as hearsay evidence.

Exam. BAKER. It may be stricken.

By Mr. SULLIVAN:

Q. You do not pretend to have counted the records yourself?

A. No; I do not pretend to have counted the records—not on every application in there. I thought Commissioner Brewster's word would be sufficient.

Q. Did you make inquiry of the Public Service Commission in New York as to how many were presently pending; did you do that last week?

A. That is right, sir.

Q. Are you able to tell us what answer you received to your inquiry from the Public Service Commission of New York?

A. Commissioner Brewster; yes.

Q. No; just yes or no, so they will have a chance to object. What were you informed by the Commission last week, in response to your request, in the ordinary course of business dealings, as the man in charge of that particular end of our business?

1185 A. Commissioner Brewster—

Mr. MACDONALD. I object.

Exam. BAKER. Raise your voice, Mr. Witness.

Mr. SULLIVAN. Speak up.

A. Commissioner Brewster, who was one of the Commissioners of the Public Service Commission, told me that there were approximately 2,500 applications that are still pending. In other words, I think some of them are disposed of. They have reduced them by 1,500, so that there are actually over 2,500 pending or disposed of.

By Mr. SULLIVAN:

Q. Will you tell us approximately how many certificates have been granted for intrastate operation in New York State, from the same source, if that is where you got it?

A. He told us that there were 200 applications—

Mr. MACDONALD. I object. This is a matter of record, and if they wish to introduce it in testimony, they should come in with the records, and not hearsay testimony.

Mr. SULLIVAN. Mr. Examiner, it simply is not a matter of record.

Mr. MACDONALD. If it is not a matter of record, it is not competent.

Mr. SULLIVAN. By that, I mean there is no source from which he can get a certified copy of a document to that effect. The only thing he could do would be to bring a Public Service Commissioner of New York here.

1186 Exam. BAKER. The witness may answer. Go ahead.

A. He informed me that there are approximately 200 applications that have not been formally disposed of.

By Mr. SULLIVAN:

Q. Mr. Mead, you are a practitioner before the Commission. Are you familiar with the provisions of the Motor Carrier Act with respect to registration of intrastate certificates with the Interstate Commerce Commission?

A. Yes, sir; I am.

Q. Will you state what the provision is?

A. Under Section 208, an operator operating wholly within the state is granted a certificate by that state body, and it merely has to register it with the Interstate Commerce Commission and it receives like rights over the same routes in inter-state commerce.

Q. May I ask whether your experience in this matter has been that that has been done with certificates of New York State by competitors of Moran Transportation Company?

A. It has been, and it has shown very severe competition. In fact, operators up there, through formal hearings with the Interstate Commerce Commission, were denied any rights, and subsequently received the rights by the mere filing of their certificates that they received from the Public Service Commission.

Q. Has that process continued?

A. That is right, sir.

1187 Q. Do you recall the grandfather date in the New York regulatory bill?

A. Yes; February 1, 1938.

Q. So that any operator in New York State, who was denied a certificate by the Interstate Commerce Commission, could establish those rights, if he could prove operation between 1935 and 1938?

Mr. MACDONALD. I object to that as calling for a conclusion of the witness upon a matter of law.

Exam. BAKER. Objection sustained.

By Mr. SULLIVAN:

Q. Is there service in New York State by express companies?

A. Yes, sir.

Q. Will you describe the coverage of that service with respect to the Moran territory?

A. It covers every point Moran does.

Q. Will you state whether that service is competitive with Moran?

A. It is very much so.

Q. Mr. Mead, did you have occasion, within the last two weeks, to make a study of the percentage of shipments of, less than 2,500 pounds that were made over the lines of the M. Moran Transportation Lines—the percentage of its total number of shipments?

A. Yes, sir.

1188 Q. Will you give us that figure?

A. 93.3 per cent.

Q. 93.3 per cent of what is what?

A. Of all our shipments for those under 2,500 pounds.

Q. And will you tell us, roughly, the number of shipments handled by the Moran Lines per day or per week, or for some period?

A. 22,000 a week.

Q. That is, intrastate and interstate, both?

A. Yes.

Q. Now, Mr. Mead, I have gotten off the subject somewhat that we started on. Will you go back to Exhibit No. 17, marked for identification, and which you have described as a partial list of the partial list of carriers serving the same territory as Moran, and describe this exhibit to us, show us how to read it, et cetera, and tell us the sources from which you got the information and what procedure you followed in preparing it?

A. Well, on this exhibit, in the left hand column, the route number, there is a designation for each individual route. In the second column is the number of carriers that we were able to locate from the dockets available, that had rights over some routes.

Q. Excuse me. When you say you located from the dockets available, at all times when you were referring to that  
1189 here, you are referring to the list of carriers in Exhibit No. 4, in evidence, on behalf of the applicant, plus those that you have thought of?

A. Plus a few that I thought of in the interval.

Q. All right. Continue with your explanation.

A. From points along the top of this exhibit, such as Cleveland, Ohio, and Erie, is one route that we use as an example. Beyond Cleveland means whichever carrier originated west of Cleveland and has a through route to New York.

Exam. BAKER. Just a moment, please, Mr. Mead. Have you had occasion to examine Applicant's Exhibit No. 14, which is a representation of various routes in Massachusetts, Rhode Island, and Connecticut?

The WITNESS. Is that Consolidated Motor Lines?

Exam. BAKER. It is New England territory in which Consolidated Motor Lines operate.

The WITNESS. Yes; I did. I don't have a copy now, but—

Mr. SULLIVAN. I can hand you one.

Exam. BAKER. He may look at this one.

Mr. SULLIVAN. All right.

Exam. BAKER. Is your Exhibit No. 17 prepared in the same manner as Exhibit No. 14, and would your explanation be the same as to the procedure followed in preparing that exhibit?

The WITNESS. That is correct; yes, sir.

Exam. BAKER. In view of that, I do not believe it is  
1190 necessary for Mr. Mead to go into detail in explaining the exhibit.

Mr. SULLIVAN. All right, sir.

By Mr. SULLIVAN:

Q. In fact, you and Mr. O'Day were working together—

A. That is right.

Q. In preparing these exhibits?

A. There is only one difference that you will note. I also inserted "beyond" carriers. For example, beyond Cleveland, or operators who have rights beyond Albany into New England, I have indicated in my exhibit.

Q. Now, there is a map in conjunction with this exhibit. Does this map purport to show all the points that Moran serves within the New York State area?

A. No, sir.

Q. I will put it to you this way: Why doesn't it?

A. Well, we just didn't have the time to show every point, and, by the same token, take off the carriers operating to and

from those points. We serve about 276 points in New York State.

Q. In New York State? How many do you serve altogether?

A. 476.

Q. Have you taken the cities, the principal cities in New York State and shown them here?

A. That is right.

1191 Q. The principal east-west and north-south routes?

A. That is correct.

Q. You have not shown the little connecting routes in between?

A. No, sir. I might say, in explanation, of course, that Appendix A shows the carriers' ICC Docket Numbers, addresses, and the routes that they were certificated over. Only the routes shown on the original files, 1, 2, 3, and 4, are indicated there—not by any means all the routes that they are certificated over.

Q. You only dealt with that part of the certificate covering the routes as shown in Appendix B?

A. That is correct.

Q. Are these all common carriers?

A. Yes, sir.

Q. And are they all commodities generally?

A. Yes, sir.

Q. Have you included contract carriers at all in your list?

A. No, sir.

Q. Have you included any ones who are simply carriers of special commodities?

A. No, sir.

Q. Is there competition from private trucks in New York State so far as the Moran Lines are concerned?

A. Plenty of it.

Q. What would you say with respect to the number of  
1192 contract truckers operating throughout the New York territory?

A. Well, I could not say with any degree of certainty. I know that about one-third of all of the operators in New York State, according to applications filed with the Public Service Commission—about one-third of them were contract carriers, and there are over 4,000 applications filed with them.

Q. Well, from your experience with the Moran Company, doing the business you have described that you do for them, what can you say as to whether there is active competition between contract carriers and Moran?

A. There is—a very severe competition. Contract carriers are really more hazardous than common carrier competition.

Q. You mean from the point of view of competition?

A. That is right.

Q. And the rates are substantially unregulated in the territory.

A. Yes, sir.

Mr. MACDONALD: I object to that, Mr. Examiner.

Exam. BAKER. What is the ground of your objection?

Mr. MACDONALD. There has been no testimony as to the rates introduced, to support any conclusion which the witness might draw from testimony concerning rates. This would be an abstract conclusion drawn from general knowledge concerning rates which are not of record.

Exam. BAKER. The question is not directed to any specific 1193 rates. It is just a question of whether the rates of contract carriers are regulated.

Mr. MACDONALD. I have no objection to that question. If that is the nature of it, I must have misunderstood it.

Exam. BAKER. Is not that correct?

Mr. SULLIVAN. That is right. I just said, are the rates of these carriers regulated, and he says they are not.

Exam. BAKER. Did you answer the question?

Mr. SULLIVAN. I don't remember whether he answered it.

A. I mean they are under regulations of the Public Service Commission and the Interstate Commerce Commission, as the case may be, but it has never gotten to the point where they have set any restrictions or any limit, or even to my knowledge have they ever suspended a contract carrier rate; so in that sense they can file any rate they wish.

By Mr. SULLIVAN:

Q. In our territory?

A. That is right.

Exam. BAKER. By "in our territory," you are referring to the territory of M. Moran Transportation Lines?

Mr. SULLIVAN: That is right.

By Mr. SULLIVAN:

Q. Is there anything else you wish to tell us that you think would be helpful with respect to this exhibit, Mr. Mead?

A. No. I would like to state, however, that, as outlined, we 1194 sufficient time, and also felt that possibly these would be representative. For example, there are carriers in here who have radial operations of, maybe, 50 miles, and which may involve 150 points, but we could only show one point, such as Rochester, in here, not taking the time to indicate each individual point that he has rights to and from. Some of the operators in

here have operating rights to and from as high as a hundred points, but there are only five to seven points shown in here.

**Q.** You made no effort to get the gross revenues of any of the companies here from the Commission's files?

**A.** Well, no; I did not. You could get the gross of the class one carriers in the Commission's files, but then, you couldn't have anything under that.

**Q.** You understand that the proof of gross revenue of those in Exhibit No. 4 for 1940 was put into the record when Mr. Howell was on the stand?

**A.** That is right.

**Q.** Are there numbers of trucks operated by some of the carriers shown on this list that are not owned by the carriers but are, rather, leased or hired trucks?

**A.** That is right—quite a few of them.

**Q.** What can you say—

**A.** In fact, there are considerable carriers in here that don't have any equipment of their own. They lease and hire it.

**Q.** Are they substantial carriers?

1195 **A.** Yes, sir.

**Q.** Are they substantial competition?

**A.** Very much so.

**Q.** You might state generally what the effect of this nonowned carrier competition has been, as to obtaining and holding business in our territory.

**A.** Well, the most devastating effect is that they do not have to worry about a balanced operation. They can pick up anywhere from five to ten trucks and send them, and they don't have to worry if they come back empty. That is not the operator's worry, whereas in our particular case, you have to see not only that they go down loaded, but that they come back loaded, or stand the expense of their coming back empty.

**Q.** As to these hired trucks operating in New York, coming in from the west and covering the New York State territory that we operate in, where we do not have hired trucks, why is it that we cannot do the same thing?

**A.** I couldn't tell you offhand.

**Q.** Would the unions permit us to do it?

**Mr. MACDONALD.** I object.

**Mr. SULLIVAN.** Why do you object? That is something that the Department of Justice ought to be interested in.

**Mr. MACDONALD.** The witness has indicated that he cannot be led.

**Exam. BAKER.** The objection is sustained.

1196 **Mr. SULLIVAN.** All right.

By Mr. SULLIVAN:

Q. Do we have hired truck operations extending around to New York State points?

A. No, sir.

Q. Does the company own substantially all of the equipment that it operates?

A. That is right.

Q. Is Interstate a competitor of the Moran Company throughout our territory?

A. Yes, sir.

Exam. BAKER. Will you state the full name, Mr. Sullivan?

Mr. SULLIVAN. Interstate Motor—

The WITNESS. Interstate Motor Freight System.

By Mr. SULLIVAN:

Q. How is that coverage as to main line points as compared to ours?

A. They practically cover everything we do.

Q. Every point we do in New York State?

A. Yes, sir; and Pennsylvania and Ohio, too, and New Jersey.

Q. Did you ever see a truck that was owned by Interstate in New York State?

A. No. In fact, in the disposition of their intrastate application, the Public Service Commission wondered why such a vast operator did not even have a truck license in New York State; and we found that they did have some of their trucks licensed in 1197 New York State, but they were not theirs. They were individual operators.

Q. What about the Monarch Freight Lines?

A. Monarch is not included in this, because their docket was not in.

Q. But they are also operators?

A. That is right; yes, sir; and they are practically all leased trucks. In fact, all their trucks are leased or hired trucks.

Q. Do they cover some of the territory covered by Moran?

A. Practically all of it.

Q. How about Western Express?

A. Globe Cartage is another one; Eastern Freightways, Transportation Lines, Inc.—

Q. Western Express?

A. Western Express, Niagara Motor Express—

Q. Well, anyway, the carriers you named own substantially no equipment?

A. That is right.

Q. And they cover substantially the same points as Moran?

A. Yes, sir.

Q. And, for one reason or another, are able to operate without it.

Mr. MACDONALD. I object, Mr. Examiner, to the attorney doing the testifying.

Exam. BAKER. Objection sustained.

1198 Mr. SULLIVAN. Have we ever tried to operate hired trucks extensively?

The WITNESS. We did.

Mr. MACDONALD. I object. That is the same thing he attempted to get from the witness a minute ago. The question is still leading.

Exam. BAKER. "Did we try to operate?" I see no objection to that. He may answer.

By Mr. SULLIVAN:

Q. Did we?

A. Yes, sir.

Q. What happened?

A. The unions stopped us.

Q. Mr. Mead, with respect to the hired truck operators that we have been discussing, certain carriers, do they also extend into New England, many of them?

A. Yes, sir.

Q. Now, Mr. Mead, did you prepare, at my request, an exhibit—did you prepare or cause to be prepared, under your supervision; as well as doing some of it yourself, an exhibit entitled "List of rail carriers serving points shown on map (Exhibit C-5 of application) of routes and territories involved in this proceeding?"

A. Yes, sir.

Mr. SULLIVAN. I would like to have this marked for identification, please, Mr. Examiner.

1199 Exam. BAKER. The document described will be marked for identification as Applicant's Exhibit No. 18.

(Exhibit No. 18, Witness Mead, marked for identification.)

By Mr. SULLIVAN:

Q. What were the sources from which this exhibit was prepared?

A. Official Railway Guide.

Q. How late an issue?

A. I will see.

Q. Well, to save you walking down and getting it, was it September?

A. Yes.

Q. Of 1941?

A. That is right.

Q. This shows only the points—the service to points that happen to be named on the map that the applicant had prepared and

introduced with the application, called Exhibit C-5 in the application?

A. That is right.

Q. Now, Mr. Mead, how does the railroad serving a given point connect with other railroads?

A. Well, they are practically all outlets. To be more explicit, a railroad can take and either switch or transfer to all other railroads for service throughout the United States.

Q. So is it important to the shipper in the movement of 1200 freight whether more than one railroad comes into the towns where he is located?

A. That is right.

Q. Well, is it important or isn't it? Listen to me, will you?

A. Oh, no; it is important. He has to sell his available service over all carriers.

Q. What kind of carriers do you mean?

A. Rail carriers.

Q. Well, do certain rail carriers also have pick-up and delivery service that they offer?

Mr. MACDONALD. I object. This is a leading question and is trying to bring the witness to agree with counsel.

Exam. BAKER. Will you read the question, please?

(Question read.)

Exam. BAKER. Objection overruled.

A. Yes, sir.

By Mr. SULLIVAN:

Q. What kind of equipment do they offer?

A. Well, they avail themselves of local pick-up and delivery trucks, and in good many cases they are using the Railway Express Agency.

Q. Who are they using at Buffalo?

A. The Railway Express Agency.

Q. Was there a time when we, the Moran Company, enjoyed that pick-up and delivery service?

A. Yes, sir.

1201 Q. May I take the word "enjoyed" out? What a time we had!

A. Yes, sir.

Q. Then we lost it to the American Express.

A. That is right.

Q. Railway Express?

A. Yes, sir; that is right.

Mr. SULLIVAN. I will reserve offering these exhibits until after cross-examination.

Exam. BAKER. Cross-examine.

## Cross-examination by Mr. MACDONALD:

Q. Mr. Mead, in regard to the map contained in Exhibit 17, you have stated that this does not purport to show all of the routes of the Moran Company?

A. No, sir.

Q. Is there any map in evidence in this case that does show all of the routes of the Moran Company?

A. Well, I couldn't testify to that because, I don't know all the exhibits that were placed in evidence.

Q. Have you been in charge of the preparation of exhibits covering the competition phases of this case for the Moran Company?

A. Yes, sir.

Q. Did you have anything to do with the preparation of the map contained in the application, identified as C-5?

A. No, sir.

1202 Q. Have you seen the map?

A. I did see it; yes, sir.

Q. This prepared to show all the routes of the Moran Company?

A. No, sir.

Q. If there are no maps covering the operation of the Moran Company but the one in Exhibit 17 and the one just referred to, identified as C-5, there then would be no map in evidence showing all the routes of the Moran Company; would there?

A. No, sir.

Q. Does Exhibit 17 give any indication of the volume carried by any of these carriers?

A. No, sir.

Q. Does it give any indication of the territory covered by these carriers in other sections of the country than that covered by Moran?

A. No, sir.

Q. Is there any indication of the number of vehicles owned or operated by any of these carriers?

A. No, sir.

Q. You have stated, I believe, that there were no special commodity carriers listed in this exhibit?

A. That is correct.

Q. Does that mean that there are none having actual operations, limited more or less to special commodities, or merely that their certificate granted or their application requested a  
1203 general commodity rating?

A. Not in every instance. Where it was drawn to my attention or for the ones under my direction, that there were specific commodities on that list, and it was what I thought was quite wide

and varied, then I felt it should be in here, because it was not restricted to any general commodities, but was almost in the same category as general commodities, but was almost in the same category as general commodities.

Q. Getting back to my question, when you state that there are no special commodity carriers, is that of your own knowledge?

A. No.

Q. When they do not engage in special commodity hauling merely?

A. Well, I had three fellows under my supervision, who drew these off. Now, you say of my knowledge. My instructions were and they merely brought everyone to me, and before I would allow them to check them, to determine just what the scope of the application was and also the commodities. For example, an operator was entitled to handle general merchandise. Whether it is general commodities or general merchandise, I believe it is practically the same thing.

Q. Then, does your statement indicate that these carriers were entitled to handle general commodities, but it does not pretend to indicate that they actually do carry general commodities?

A. No. The point I was trying to bring out is that there  
1204 may be one or two in there who are restricted to the handling of certain commodities. They are all handling general commodities, with these one or two exceptions that I cited.

Q. Can you identify those one or two exceptions?

A. Yes, sir; Thursam Transportation and Storage—

Q. Will you state what their business consists of, in regard to the testimony that you have just given?

A. Oh; I think they had roofing, building material, felt paper, to certain points, and they also had general commodities, at least to certain other points; and Ernest Bradley.

Q. Before leaving Thursam, can you give us an indication of the routes over which they carried general commodities as compared with routes over which they carried these specific commodities?

A. No; I could not.

Q. Go ahead with your next carrier.

A. Ernest Bradley. I know he was restricted as to commodities, but I couldn't tell you just what those commodities were. I don't know what they were.

Q. Those are the only two?

A. That is right.

Exam. BAKER. Mr. Mead, before you answer Mr. Macdonald,

I do not understand that the carriers listed represent carriers that, from your personal knowledge, with the excep-  
1205 tions mentioned, actually operate as carriers of general

commodities, or does the list purport to represent merely that they are entitled under their operating rights to so operate?

The WITNESS. To the best of my knowledge, all of these carriers, with the exception of the two previously mentioned, not only are entitled to, but also transport general commodities over all the routes in connection with this Exhibit No. 17.

By Mr. MACDONALD:

Q. You stated "to the best of my knowledge." Does that mean insofar as your personal files are concerned, which you previously testified afforded a number of the bases for the preparation of Applicant's Exhibit No. 4, and your personal knowledge of some of those carriers, and some others that were added to that list?

A. No; my statement was not the rights that they had. My statement was as to what I know they actually handle.

Q. You are testifying as to your own personal knowledge now?

A. Yes, sir.

Q. That covers all of these carriers in Applicant's Exhibit No. 17?

A. With the exception of one or two I mentioned previously, where they are restricted to certain particular commodities.

Q. You can testify, of your personal knowledge, as to the actual operations in routes and commodities carried, and 1206 from other data as to all of the carriers on this exhibit.

Mr. SULLIVAN. Let us hear that—routes what?

Mr. MACDONALD. Commodities carried and other data in regard to all of the carriers on this exhibit.

A. Yes, sir.

By Mr. MACDONALD:

Q. Will you state what the actual commodities carried by the Horlacher Delivery Service are, or is that information on this exhibit?

A. No.

Q. Do the Moran Lines extend to Baltimore?

A. No, sir.

Q. Will you state for the record what the competition of W. T. Cowan, Incorporated, would be to the Moran Lines?

A. As indicated on the map, from Binghamton to Philadelphia.

Q. Would the nature of their business be to accept interchange at Binghamton for Philadelphia or points south?

A. Yes.

Mr. SULLIVAN. Let us hear the question: There are a lot of things in there. Listen to it. What is the use of trying to trap him?

Mr. MACDONALD. I wonder if we could pursue this examination without interruption, unless it is based on an objection.

Exam. BAKER. Do you understand the question, Mr. Mead?

The WITNESS. Yes; I believe I do.

1207 Mr. SULLIVAN. Read him the question.

(Question read.)

A. That is correct.

By Mr. MACDONALD:

Q. What interchange business does Moran receive at Binghamton for points south, originating in the New York territory?

The WITNESS. Will you read that over again?

(Question read.)

A. Moran does not receive anything at Binghamton for the south, if that is what your question is.

By Mr. MACDONALD:

Q. Then, insofar as your business originating at Binghamton for points south is concerned, Moran is not competitive with the Cowan Company; is it?

A. Not south of Philadelphia.

Q. I said south of Binghamton.

A. Well, they are, because, if my understanding is correct, Philadelphia is south of Binghamton.

Q. I agree with you, but my question went to the point of business interchange at Binghamton, which is carried by Moran as far as Philadelphia, or the exchange business Cowan receives at Binghamton going to Philadelphia, Baltimore and points south.

A. Yes, sir; that is—

Q. The point of my question was to determine whether or not the business of Cowan was interchange business, which  
1208 would not be turned over to Moran at Binghamton, because be originating with carriers competitive with Moran in the New territory.

Exam. BAKER. Before you answer that question—

The WITNESS. I don't understand.

Exam. BAKER. Let me ask you a question. Did you intend to imply that the only business handled by Cowan from Binghamton was interchange business? Was that what you intended?

The WITNESS. No. They also handle merchandise that they pick-up themselves at Binghamton and handle through to Philadelphia, Baltimore, and Washington, in addition to the exchange or transfer that they make with ourselves and carriers at Binghamton.

Exam. BAKER. Do you still want to ask him the question?

Mr. MACDONALD. Maybe I can qualify it to meet the point that the Examiner has brought out.

By Mr. MACDONALD:

Q. Is not Binghamton pretty generally an exchange point for motor carriers, that is, operating from the Potomac region up north to as far as Binghamton, and those operating in New York territory, transferring freight that moves down the seaboard?

A. No; I wouldn't say so. It is in our particular case to Philadelphia and to South Carolina.

Mr. SULLIVAN. It is what?

The WITNESS. A transfer point.

1209 Mr. SULLIVAN. Will you read him the question he is answering? It is going to lead to another whirlwind again.

By Mr. MACDONALD:

Q. Does Exhibit 17, by the drawing of a line, for example, the first line in the exhibit, from Cleveland beyond through New York, N. Y., indicate that the carrier so represented serves all the points through which the line passes?

A. No.

Exam. BAKER. Did you answer "no" to that?

The WITNESS. No; yes, sir.

By Mr. MACDONALD:

Q. So far as this exhibit is concerned, this exhibit purports to show only the competition between the all-over points, originating and destination points, and has no relation to the city through which the carrier may pass en route?

A. If you will take further down on the exhibit you will find that it takes in shorter routes, and also there is an indication in there as to the operation between each individual point indicated on the exhibit.

Q. In what way could it be determined what routes each carrier covers?

A. By referring to Appendix A.

Q. Referring to Appendix A, you have the carriers listed and a key to each of the routes which the carrier covers; is that correct?

1210 A. That is correct.

Q. Does this appendix, with the key, indicate all the cities that are served by the carriers?

A. Not all the cities, just cities as indicated on this exhibit. It does not purport to show all the rights, all the routes, all of the points served by these carriers.

Q. So far as the route may begin or terminate at one of the cities shown on the map contained in the exhibit, your statement is that it does purport to indicate that the carrier concerned originates and consigns freight to the city.

The WITNESS. Will you read that question?  
(Question read.)

Mr. MACDONALD. Will you change the word "consigns" to "delivers," please?

A. That is correct.

By Mr. MACDONALD:

Q. Will you state for the record, please, what carrier, if any, with operations only in the New York-New England territory, has a gross operating revenue equal to or larger than that of the Moran Company?

A. Keeshin-Seaboard.

Q. My question was operating only in the New England and New York territory. Do you mean to imply that Keeshin operates only in those territories?

A. No. In fact, Moran and Consolidated do not only operate in the two territories. We also operate in Pennsylvania,  
1211 Ohio and New Jersey.

Q. Eliminating the state of Ohio, except for Cleveland, and the route through Erie to Buffalo, and the states of Indiana, Michigan, and Illinois, and other middle west states, what carriers competing with Moaran in the New York-New England area have operating revenue equal to Moran?

A. Do I understand, if we were to eliminate there any carriers who have rights in these states, from operating revenues in these states—

Q. No.

A. To determine if it will be the same or exceed Consolidated and Moran.

Q. My question apparently is not clear. I want to know what carriers have operating revenue equal to Moran, eliminanting carriers which have routes in the middle west, exclusive of Moran's route into Cleveland; for example, does the Keeshin Motor System extend into the middle west?

A. Yes.

Q. As far as Chicago?

A. That is right. I believe they go across the country.

Q. Then, so far as Keeshin is concerned, the business volume could not be considered with that of Moran, which is drawn from a more limited area; could it?

A. Well, I don't know if their earnings or, rather, their business within these states would be the same or exceed it,  
1212 because they really cover practically the same territory.

Q. I did not ask you that.

A. And they do considerable business.

Q. They do considerable business, but I did not ask you to allocate which portion of it originated in New York or New England. I merely asked you to state what carriers other than those operating extensively into the middle west have operating revenues equal to Moran.

A. I don't know. I couldn't state that unless I had an opportunity of checking it.

Q. Do you know of any, of your own knowledge, other than Consolidated?

A. I don't know that even Consolidated—I don't know what their revenue is. I haven't checked it in quite a while.

Q. The record shows that Mr. Arbour testified that Consolidated has the third largest gross revenue of any trucking company in the United States. Do you know what the two larger ones are?

A. I believe Keeshin-Seaboard and Horton.

Q. How would you place Interstate?

A. Well, I know that they had \$9,000,000 operating revenue last year.

Q. And that is drawn from what territories, could you say?

A. That was what was filed with the Interstate Commerce Commission; so I assume it takes in all of the territory they serve.

1213 Q. In regard to your Exhibit No. 4—

Mr. SULLIVAN. Excuse me. Mr. Examiner, lest there be any misunderstanding, there is nothing in the record to show that Mr. Arbour testified to any such thing as counsel is quoting here.

Exam. BAKER. I do not recall any such testimony, myself; but the record will show.

Mr. MACDONALD. If I am wrong, the record will demonstrate the fact. Mr. Reporter, will you read the fragment of the question that I had asked a moment ago?

(Question read.)

The WITNESS. In regard to Exhibit 4?

By Mr. MACDONALD:

Q. (Continuing.) Certain testimony was given to indicate the volume of gross operating revenues of some of the carriers on that exhibit. The Interstate Trucking Company was included in that exhibit, was it not?

A. Yes, sir.

Q. And it is also included in Exhibit No. 17?

A. That is right; yes, sir.

Q. Insofar as their business in the New York-New England area is concerned, have you any knowledge as to what portion of their gross operating revenue is derived in that territory?

A. No.

Q. Do they operate extensively in the middle west?

1214 A. They operate extensively from the Atlantic Coast to the middle west.

Q. They are essentially an east-west carrier over that Atlantic Coast-middle west territory?

A. No; I wouldn't say that. They also operate within these various states in the east.

Q. So far as the figure representing their gross operating revenue is concerned, it has no relation, has it, to the operations of that company in the New York-New England area?

A. No; there is no indication from that what portion would be allocated to that received from operations within New York State or New England.

Q. Of the carriers shown in this exhibit, will you please indicate which have as extensive a route coverage in New York as Moran?

A. Well, there is Keeshin-Seaboard, Interstate Motor Freight System, Transportation Lines, Inc., Richards Motor Freight Lines, Acme Fast Freight, National Car Loading Corporation, and Universal Car Loading Corporation.

Q. It is your statement, then, that each of these has at least as much route coverage serving the same points as Moran?

A. They practically cover every route that we do.

Q. They practically cover it?

A. Yes, sir.

Q. Is there any of them which will have the same coverage in New York as Moran and Consolidated combined?

1215 A. Well, the ones that I mentioned would, because Consolidated and Moran combined would not broaden it any, only Moran has a few more routes than Consolidated.

Q. Essentially, Consolidated and Moran have the same operations today, then?

A. Well, Moran—

Mr. SULLIVAN. Listen. He has not said that.

Mr. MACDONALD. If he wants to make an objection, Mr. Examiner, I do not want to criticize him, but I do say that the interpolations here are out of place.

Mr. SULLIVAN. I object, Mr. Examiner, to this business of trying to get a witness all tangled up, where we are supposed to be—I object to hiding a question behind peoples' mustaches, or something, for the purpose of confusing him. Now, it seems

to me that that is a part of some kind of a well laid plan here to confuse the record. I don't like it, and I object to it.

Mr. MACDONALD. Mr. Examiner, if there is any legal objection to the question, I have no exception to take to that, but if it is the contention of counsel that witnesses—not this particular witness, but any witness who gets on the witness stand is interested simply in producing facts, and not in serving the interest which he is here to serve, then his remarks are  
1216 well taken. Otherwise, I feel they are definitely out of place.

Exam. BAKER. I think the form of the question is objectionable.

Mr. MACDONALD. Which question, Mr. Examiner?

Exam. BAKER. The question which Mr. Sullivan objected to.

Mr. MACDONALD. In what way or in what respect? I do not know that he laid any legal foundation.

Exam. BAKER. The answer which you were leading the witness to make would obviously have been incorrect.

Mr. MACDONALD. Well, I request to have the answer read that the witness made to the last question, and the question with which I followed it.

Exam. BAKER. Will you read that, Mr. Reporter?

(The reporter read as follows: "Q. Essentially, Consolidated and Moran have the same operations today, then? A. Well, Moran——".)

Mr. MACDONALD. It seems to me the witness has answered that question in his previous answer, and I am not going to mislead him or take advantage of any such situation as implied by counsel.

Exam. BAKER. If your question had been limited to New York State, perhaps, it would be essentially the same, but it was not so limited. Did you intend to limit it to New York State?

1217 The WITNESS. Well, I——

Exam. BAKER. Just a minute.

The WITNESS. Oh, I beg your pardon.

Mr. MACDONALD. The witness, in answering the prior question, stated, except for a few routes, Moran and Consolidated, the combination of Moran and Consolidated, would not enlarge the operations of Moran.

Exam. BAKER. But that question was directed to New York State.

Mr. MACDONALD. I do not know whether it was. It was asking for a conclusion of the witness based upon his previous answer, qualified because I included the word "essentially," allowing for the extra routes which Moran has.

Exam. BAKER. In any event, I believe the question is objectionable. You may ask him another question which will take into consideration the combined operation.

By Mr. MACDONALD:

Q. Excluding the loop which Moran has above Syracuse, extending into upper New York, what territory does Moran serve that Consolidated does not serve in New York State?

A. New York State? Well, from Buffalo as far west as the Pennsylvania State Line. From Buffalo south along the Pennsylvania State Line, through Olean, Jamestown, Niagara, Westville, Dansville and Perry, as far as but not including Elmira, New York; from Binghamton across to New York City; 1218 from Binghamton up through Oneonta into Albany; from Albany north to Glens Falls and Hudson Falls, as far as Plattsburg, and there are numerous other ones, but I just don't remember them.

Q. Can you give us an idea as to the route mileage that these routes which you have just mentioned would be as compared with the total mileage of Moran?

A. I couldn't state that.

Q. Can you give us an idea of what the route mileage of Moran is?

A. No; I could not.

Q. In identifying the exhibit, Mr. Mead, you stated that some carriers had been added to the list which you had on Exhibit No. 4 for the applicant. Would you tell us which of the carriers have been added?

A. Well, I don't know. I would have to go through and compare every one of those before I could state it.

Exam. BAKER. In the interest of saving time, Mr. Macdonald, unless there is some particular purpose that you have in mind, will not the exhibit speak for itself in that respect?

Mr. MACDONALD. Well, Mr. Examiner, we are trying to determine what the difference between this exhibit and the former exhibit is, in that the former exhibit listed points served by all the carriers, and this exhibit, according to the testimony of the 1219 witness, does little more than to divide it up in general directions, without indicating whether the points on those routes are served or not. We are trying to determine what the difference between the exhibits is.

Exam. BAKER. Of course, Mr. Macdonald, you indicated an objection to the previous exhibit, because it did not indicate that service was rendered over the direct route, but merely covered service at a point. It would be my impression that the purpose of this would be to meet the objection to the other exhibit.

Mr. MACDONALD. No, Mr. Examiner.

Exam. BAKER. If you have something in mind, you can proceed with your questioning. I was trying to save time.

Mr. WIPRUD. Our objection to Exhibit No. 4 was more extensive than that.

Exam. BAKER. I realize that.

Mr. WIPRUD. The testimony of the witness on Exhibit No. 4 was that, as far as Binghamton was concerned, the carriers listed—of the carriers listed only 31 of 68 were competitive. Our objection went to that point more than the one that you mentioned, and I understand this exhibit covers exactly the same thing.

Exam. BAKER. Just to keep the record clear, I do not believe the testimony was that only 30 of the 60, whatever the exact figures are, were competitive; but the record will speak for itself 1220 in that regard. You may proceed, Mr. Macdonald.

By Mr. MACDONALD:

Q. Are you able to indicate any of the carriers that have been added to this list?

A. By comparing one list against the other, A. C. E. Transportation at Akron, Ohio; Akron-Chicago Transportation Company, Akron, Ohio; All States Freight, Inc., Akron, Ohio—

Mr. SULLIVAN. Could we do this, Mr. Examiner: After Mr. Mead leaves the stand, he may check one against the other and hand it to them.

Mr. MACDONALD. No, sir.

Exam. BAKER. Go ahead, Mr. Mead.

A. (continuing) Amsterdam Dispatch, Inc., Amsterdam, New York; B. & E. Transportation Company, New York; B. & S. Transportation, South Boston, Mass.; Beach Transportation Company, New York; B. L. Bernstein, Passaic, New Jersey; Buffalo Storage & Carting Company, Buffalo, New York; C. & M. Forwarding Company, Rochester, New York; A. Cimpi, Auburn, New York; Cleveland-Buffalo Transportation Company, Cleveland, Ohio; Cox Transportation, Cleveland, Ohio; Dixie-Ohio Express, Akron, Ohio; Erie Freight Lines, Cleveland; Glens Falls, N. Y., Express; Globe Cartage; Interstate Magazine Hauling Corporation; Kultau Motor Express; Fred D. Langdon; Lapp Express Company; McCullough Transfer; William McCullough Transportation Company, Inc.; Motor Age Transit Lines; Newell Trucking Company; Roadway Express, Inc.; Roadway 1221 Transit Company; S. & S. Transportation Company; Shippers' Dispatch, Inc.

Q. Will you indicate the city in which they are located, too, please, as you started to do?

A. G. E. Wolfe Transportation Lines, Holland, New York.

Q. Do you know the actual extent of the commodities carried by the Interstate Magazine Hauling Corporation?

A. Yes, sir; general commodities.

Q. Is there any carrier operating in the Buffalo-Syracuse-Rochester region which operates through routes into North Carolina or Tennessee points, as a single carrier operation?

A. No, sir; I can't recollect just now.

Q. If there were such a carrier, you would be in a position to know of it, would you not?

A. Well, no; I wouldn't say, but I will say that I know nearly all the competition to New York State, if I had a chance to check it a little more, to be sure whether there is or is not.

Q. You are assistant traffic manager for Moran?

A. Yes, sir.

Q. You stated, I believe, that you had some intrastate carriers on your original Exhibit No. 4, and that these had been dropped. Am I correct in that?

A. Well, I don't know that they have interstate rights, because I have not been able to obtain the dockets on them.

Q. But some of the carriers contained in Exhibit No. 4 will be found in Exhibit No. 17?

1222 A. Oh, quite a few of them; yes, sir. There are over a hundred we couldn't find the docket on.

Q. Were there some on which you could get the docket and which you now drop?

A. No; there were not.

Q. Will you state for the record, please, insofar as your personal knowledge will allow you, what carrier Moran exchanges with to points in the south, first of all?

A. W. T. Cowan is the only carrier. We do have one interchange with Mason-Dixon Lines, but it is restricted to drugs, and it is restricted to applying from one point in New York.

Q. Can you give us the same information in regard to exchange moving west from western New York points and Cleveland?

A. Moving into the west?

Q. Yes.

A. Motor Express, Inc., C. & B. Transit Company, Trans-American Freight Lines, Great Central Transport.

Q. These carriers serve the middle west; is that right?

A. Yes, sir.

Q. And insofar as they are contained in your exhibit, they also are competitive in certain operations?

A. That is right, from Buffalo to Cleveland and Erie and intermediate points there. That is right.

Q. But you also use them as exchange carriers?

A. Yes, sir.

1223 Q. Is it the general rule for truckers to transfer loadings with carriers which are considered strongly competitive?

A. Well, we do.

Q. Do you have any exchange that amounts to any particular volume in any other direction from your territory?

A. Well, into New England.

Q. What part of New England?

A. Well, I would say New Hampshire, Massachusetts, Connecticut and Rhode Island.

A. With what carriers do you exchange in the Massachusetts, Connecticut and Rhode Island section?

A. McCarthy Freight System, Adley's Express, W. A. Stackpole, Imperial Freight Lines.

Q. Do you have joint published through rates with Cowan?

A. Yes, sir; only to Washington, Baltimore, Philadelphia and Wilmington.

Q. Then, am I correct in believing that you do not have a substantial volume moving south of those points, out of your territory, destined for points, say, in North Carolina and Virginia?

A. Yes; it is a substantial movement there, too.

Q. But those are not on a through rate basis?

A. Points south of there?

Q. Yes.

A. No; they are not.

1224 Q. Insofar as your transfers to McCarthy and Adley are concerned, is this to the territory served by both of them?

A. Yes.

Q. Then, insofar as this merger is concerned, am I correct in believing the need for further transfer to Adley will be eliminated?

A. Not that I know of.

Q. Can you explain that, in the light of your previous statement?

A. Not any more than we would refuse to transfer at the present time our Buffalo shipments going to Cleveland, which we do, although it is in competition with our through operation.

Q. You mean when you use shipper's routing?

A. Yes; that is right.

Q. Am I correct in believing that so far as freight which does not have shipper's routing is concerned, the need for transfer to Adley will be eliminated when McCarthy becomes a part of the system of Associated Transport, Inc., under the application that is now pending?

A. At the present time, every shipment will go—if a customer gives us a shipment that we can move via Moran, it is routed via Moran. If they put it down through Trans-American, it is routed

through that medium. It is routed through that medium and handled in connection with those carriers.

Q. If it is routed Associated, it would go Associated all 1225 the way, would it not, assuming that "Associated" refers to the Associated Transfer, for which the application is now pending?

A. Yes.

Q. McCarthy would then be a part of Associated Transport, Inc.?

A. Yes, sir.

Q. So that there would be no need for an exchange to Adley?

A. If the customer doesn't desire any exchange, there wouldn't be; no.

Q. Do you have joint through rates with Adley?

A. Yes.

Q. And McCarthy?

A. Yes, sir.

Q. You stated that you have extensive competition from private trucks. Do private trucks serve the public?

A. Individually; yes.

Q. But primarily they are concerned with serving their employer, who is a shipper, are they not?

A. Yes. It is also service to the employer's customers.

Q. Do contract carriers, as a rule, in your territory haul general commodities?

A. Yes, sir.

Q. For concerns which have quite a few types of freight to be hauled; is that right?

A. Well, not necessarily, but I mean that they have so many customers and so many various kinds of commodities from 1226 those customers, that it gets in the category of general commodities.

Q. Breaking it down, can you tell us, from your own experience in the territory with which you are familiar, about how many shippers a contract carrier will serve—one contract carrier?

A. No. That is a point I would like to determine, that is, where they cease to be a contract carrier. We have sometimes 10 or 12 or 15 concerns. They pool up, and necessity requires that you get money for return loads.

Q. Do you know of any carrier which has been certificated by the has certificated for as many as 25 shippers?

A. I don't know as the Commission has restricted contract carriers to just how many shippers they can serve.

Q. Will you please answer my question?

A. I don't think there is anything contained in the certificate as to just how many shippers.

Q. All right, sir: I simply asked you if you know that there are any carriers who are certificated to serve as many as 25 shippers.

A. I couldn't state.

Q. Would your answer be the same as to the number of 15 shippers?

Mr. SULLIVAN. I think he has answered the question. I object to it, Mr. Examiner.

Exam. BAKER. The witness may answer, if he knows.

The WITNESS. Put that question again.

1227 (Question read.)

A. Well, I couldn't state definitely.

By Mr. MACDONALD:

Q. Can you state from your own knowledge how many commodities on the average would be carried by a contract carrier in the territory with which you are familiar?

A. There doesn't seem to be any restriction as to commodities.

Q. I did not ask you whether there were restrictions, but as a matter of practice, how many commodities on the average would be carried by a contract carrier?

A. That depends upon the size and scope of the contract. I know contract carriers that are certified to handle general commodities, which would take in thousands of various commodities.

Q. Do you know of any carrier which has been certificated by the Commission to carry as many as 10 commodities?

A. As I stated, I know contract carriers certificated to carry general commodities.

Q. Would you name such a carrier, please?

A. Stibbs Transportation Line.

Q. How many shippers does he serve?

A. I couldn't say.

Q. But you do know?

A. I know them for a contract carrier of general commodities.

Q. Has a permit been issued by the Commission to the Stibbs Transportation Lines, if you know?

1228 A. I couldn't say. I have the file in my office, but I haven't checked it.

Q. Is the Stibbs Transportation Lines also a common carrier?

A. They have filed both—both contract and common carrier.

Q. So far as their operations are concerned, is it a fact that their common carrier rights would be used supplementary to their contract carrier rights?

A. There have been cases where carriers have been given contract and common carrier rights, if that is what your question is?

Q. Do you know whether he is a dual carrier, operating over the same territory and in both types of service?

A. He is; yes.

Q. Has he been issued a permit and a certificate by the Commission?

A. As I told you, I couldn't state. I don't know just what his status is. The last time I heard, Stibbs Transportation application was sent to the field to be handled.

Q. Would you say that a contract carrier, as regards the competition he affords to the Moran Lines, offers any more competition than that relating to the limited number of commodities he carries, if he is so limited?

A. I don't understand that.

Exam. BAKER. That question answers itself, does it not, Mr. Macdonald? That is argumentative, I think. It involves 1229 motive.

Mr. MACDONALD. We have a motive, Mr. Examiner. I will strike it. That is all I have.

Exam. BAKER. Is there any further examination?

Mr. SULLIVAN. I have just a couple of questions to ask him, and then I will be through.

Exam. BAKER. Very well.

Redirect examination by Mr. SULLIVAN:

Q. Mr. Mead, the Moran Transportation Lines, do they ship or do they use any interchange or a substantial amount of interchange to the south; I mean joint rates?

A. We don't have any joint rates, only to three points I mentioned in connection with Cowan.

Q. And what are the three points?

A. Washington, Baltimore and Wilmington.

Q. All right.

Mr. MACDONALD. May I ask is that Wilmington, Delaware?

The WITNESS. That is correct; yes, sir.

By Mr. SULLIVAN:

Q. Except for the drug movement, you said.

A. In connection with Mason & Dixon Lines from Norwich, New York.

Q. Where do you transfer with Mason & Dixon?

A. Philadelphia.

Q. Does Mason & Dixon come to Binghamton?

A. Not to my knowledge.

1230 Q. Does the Moran Company have any substantial movement of freight into what might be called the south, other than those points that you named?

A. We have practically no tonnage down now.

Q. Say it again, I can't hear you.

A. We don't have practically no tonnage moving down there now.

Q. You mean that we have no tonnage moving down there; is that it?

A. No; that is right.

Q. And we have no connections, except those that you have named?

MR. MACDONALD. Mr. Examiner, I object, on the ground that it is leading.

EXAM. BAKER. Objection sustained.

MR. SULLIVAN. Mr. Examiner, there is some justification for some of the leading questions. I say it is proper under the circumstances. Mr. Macdonald asked the witness a question as to whether there were substantial movements into the south by a combination of rates.

MR. MACDONALD. This is informing the witness, Mr. Examiner.

MR. SULLIVAN. Trying to trap a witness here. I don't understand that philosophy. I am trying to get at the facts.

MR. MACDONALD. It is not facts—

EXAM. BAKER. You may complete your statement, Mr. Sullivan.

1231 MR. SULLIVAN. I hope so. I say, I asked a question as to whether there was a substantial volume of business moving into the south by joint rates. Counsel intended to show that the Moran Company had a substantial volume of movement into the south by joint rates. That will be a fair connotation upon the record, for Mr. Mead to answer, but I think what Mr. Mead meant was that there is a joint movement from the north to the south by joint rates, but not over the Moran Lines, and in order to keep from going all over the landscape and avoid difficulty in straightening it out, I asked the question. The question he put to him was for the purpose of misleading the witness.

MR. WIPRUD. We object to the statement of counsel. There is nothing in the record to warrant that.

MR. SULLIVAN. Mr. Examiner—

MR. WIPRUD. I think Mr. Macdonald has fairly stated his purpose. There is no misleading the witness here. All we want are the facts.

EXAM. BAKER. All right. Proceed with your examination.

By MR. SULLIVAN:

Q. Is it a fact that the Moran Company does not have a substantial volume of movement to the south, by means of joint rates?

A. No; we do not. We have very little, and that is to those three points.

Q. All right. Do you know the volume? Well, that is 1232 all right—a joint rate to those three points.

A. Yes.

Mr. MACDONALD. Well, now—

Mr. SULLIVAN. I just wanted to know whether—

Mr. MACDONALD. I think our position was very well brought out by the witness.

Exam. BAKER. Proceed, Mr. Sullivan.

By Mr. SULLIVAN:

Q. I mean it is not a combination.

A. No; a joint through rate.

Q. Now, Mr. Mead, can you give us the volume, or the percentage of the volume, either one of the interchange business that Moran Company does to all points? What percentage of its revenue or what amount of its revenue, in dollars, is interchange business?

Mr. MACDONALD. Mr. Examiner, I think that is in the record by Mr. Arbour's testimony.

Mr. SULLIVAN. He was not testifying for the Moran Company. I do not know how he would know.

Exam. BAKER. This witness may answer also.

A. I would have to check on it.

Mr. SULLIVAN. All right. That is all.

Exam. BAKER. We will take a recess for 15 minutes. After the recess, I will have one or two questions of Mr. Mead.

(A short recess was taken.)

1233 Exam. BAKER. Come to order, please.

Mr. SULLIVAN. I have one question, Mr. Examiner.

By Mr. SULLIVAN:

Q. I would like to ask you, Mr. Mead, are you now prepared to give us the percentage of revenue that the Moran Transportation Company received from transfers?

A. Approximately 20 per cent.

Q. What is the Moran revenue, roughly, do you know?

A. Approximately \$3,000,000.

Q. That would be, then, how much in dollars—20 percent?

A. About \$600,000.

Q. Is that percentage of the Moran revenue, therefore, derived from territory outside of the place where Moran has its routes? I mean, on hauls of freight going outside of the territory?

A. That is correct; yes, sir.

Mr. SULLIVAN. That is the only question I have, Mr. Examiner.

Exam. BAKER. Mr. Mead, I notice your exhibits lists car loading companies, including the National Car Loading Company, Universal Car Loading Company, and Acme Fast Freight, Inc. Is the latter a car loading company?

The WITNESS. Yes, sir.

Exam. BAKER. Is each of these companies a motor carrier operating under its own rights?

The WITNESS. They have applications on file with the Interstate Commerce Commission as motor carriers, and it still  
1234 is status quo as to their actual status, and therefore they have continued to be in competition and operating over all the routes indicated in this exhibit.

Exam. BAKER. With respect to the Seaboard Freight Lines, you said, I believe, that the Keeshin System extended into the middle west. Do you know whether or not the operations of the corporate entity, Seaboard Freight Lines, extend into the middle west?

The WITNESS. No; Keeshin, or Seaboard, rather, operates throughout New England and between New York metropolitan area and New York State points.

Exam. BAKER. They are all the questions I have. The witness is excused.

Mr. SULLIVAN. I have one more question, please.

By Mr. SULLIVAN:

Q. You mentioned Buffalo Storage and Delivery. To whom do they belong?

A. Buffalo Storage & Delivery, I understand, the Pennsylvania Railroad Company.

Q. Who does the C. & P. belong to?

A. The same concern.

Q. The Pennsylvania Railroad?

A. Yes, sir.

Q. The Liberty—what is its full name?

A. The Liberty Forwarding & Distributing Company.

Q. Are they affiliated with some other company?

1235 A. Well, it is my understanding they are affiliated with Acme Fast Freight, or through the same relationship.

Q. Do you know the percentage of revenue of any of these companies, such as Interstate, the percentage of, say, Interstate's \$9,000,000 revenue which you spoke of that they derived from operations for that part of their work which takes place in the Moran territory or the New England territory?

A. Well, within approximately 30 to 35 per cent.

**Q.** So that I understand you are saying that the percentage of revenue of \$9,000,000 that is derived from hauls in New York and New England, would be around \$3,000,000?

**Mr. MACDONALD.** Mr. Examiner, I wish to interpose an objection on the ground that the witness testified on cross-examination he could not analyze the business in regard to the territories in which they operate.

**Exam. BAKER.** I realize he so testified. If he wants to change his testimony, he may do so. Do you have personal knowledge of the facts?

**The WITNESS.** The information I got is from the officers, outlining just what percentage of their operation is within that area. I could not definitely state exactly just what it is, but from conversations with these gentlemen and at rate hearings and other hearings, they have indicated just how much of their business would be involved in any rate adjustment within, we will say, Middle Atlantic and New England area.

1236 **Exam. BAKER.** Does this figure of 30 or 35 per cent cover the Middle Atlantic and New England areas?

**The WITNESS.** Well, the Middle Atlantic, insofar as New York State is concerned, and New England, and I understand their operations in New England are confined to Massachusetts, Connecticut, and Rhode Island.

**Exam. BAKER.** What I want to know is, does the figure of 30 to 35 per cent of their business include business derived from operations in New England, as well as New York State?

**The WITNESS.** Yes, sir.

**By Mr. SULLIVAN:**

**Q.** You named the Motor Express as one of the companies with which Moran connects?

**A.** Yes, sir.

**Q.** They are part of the trucking system?

**A.** U. S. Freight.

**Q.** U. S. Freight Lines of Delaware?

**A.** That is right.

**Q.** Who owns Niagara—what is their full name?

**A.** Niagara Motor Express.

**Q.** Where do they operate?

**A.** They operate throughout New York State over practically the same routes we do.

**Q.** Meaning Moran?

**A.** Yes.

**Q.** Who owns Niagara?

1237 **A.** William O'Neill.

**Q.** What, if anything, is his connection with the U. S. Truck Lines of Delaware?

A. Well, he is a substantial stockholder in that company, and, in fact, Niagara Motor Express was formerly owned by the U. S. Truck Lines, and they sold that to William O'Neill.

Q. Now, there has been some testimony here by Mr. Altwater that the gross business of the U. S. Truck Lines of Delaware in 1940 was somewhere around \$17,000,000 to \$18,000,000. Do you subscribe to that testimony?

A. Yes, sir.

Exam. BAKER. Do you have any personal knowledge of that?

The WITNESS. Well, I do. I will tell you how I obtained the information. It is through William O'Neill, of Niagara Motor Express. He is a personal friend of mine.

Mr. MACDONALD. I object to it as hearsay.

Exam. BAKER. Do you desire the testimony to be stricken?

Mr. MACDONALD. I do.

Exam. BAKER. The answer of the witness will be stricken, so far as it pertains to the revenue of the U. S. Truck Lines.

By Mr. SULLIVAN:

Q. Do you know who the president or the operating head of the U. S. Truck Lines of Delaware is?

A. It is Steve O'Neill or Hugh O'Neill.

Q. Hugh O'Neill?

A. Hugh O'Neill.

2114 Q. What relation is he to Mr. William O'Neill?

A. He is a brother.

Q. You mentioned Mr. Steve O'Neill. He is also an officer of U. S. Truck Lines of Delaware?

A. Yes, sir.

Q. What relation is he to Mr. Hugh O'Neill and to Mr. William O'Neill?

A. Brother.

Q. Do you know whether or not Mr. O'Neill was connected with the Niagara Freight System before he acquired the ownership of it?

A. He was president.

Q. And that was, as you testified, at the time it was owned by the U. S. Truck Lines; is that right?

A. Yes, sir.

Q. At that time was he also an officer of U. S. Truck Lines?

A. Yes, sir.

Mr. SULLIVAN. That is all. At this time, I offer Applicant's Exhibits 17 and 18, which are now marked for identification. I offer them in evidence.

Mr. MACDONALD. I object to the admission of Applicant's Exhibit 17, on the ground that it is incomplete and misleading in re-

gard to the points served on the routes indicated, and the map does not represent a true picture of the operations of the Moran Company.

1239 . Exam. BAKER. The objection will be overruled. Applicant's Exhibits Nos. 17 and 18 will be received in evidence. (Exhibits 17 and 18, Witness Mead, received in evidence.)

Exam. BAKER. Are there any further questions of this witness? The witness is excused.

Mr. BURNETTE. I would like to ask one question.

By Mr. BURNETTE:

Q. Mr. Mead, you show Lynchburg on the C. & O. and N. & W. Is there any other road serving Lynchburg?

A. I obtained this information from the Official Railway Guide, and it may be possible that there are others serving that point.

Q. Lynchburg is also served by the Southern Railroad. We have three railroads there, and I would like to get Lynchburg in the proper light.

Mr. BURNETTE. That is all. Thank you.

The WITNESS. You are welcome.

Mr. MACDONALD. Mr. Examiner, at this time I want to correct an impression which one of my questions made on the record, in which I assumed Mr. Arbour had testified in this proceeding that Consolidated was the third largest trucking company in the United States. That was derived from the record of the proceed-

1240 ing in another case and consequently I was not correct in saying it was received in this case. I would like to have the record so show.

Exam. BAKER. Very well.

Mr. SULLIVAN. He wants the record to show what—that that is the fact and that Mr. Arbour testified to it, and that he derived that knowledge from another case, and after that took notice of the other case, or what does he want the record to show?

Exam. BAKER. Of course, we will not take notice of the other case.

Mr. MACDONALD. I think my statement so indicated.

Exam. BAKER. The witness may be excused.

(Witness excused.)

Exam. BAKER. At this time, I would like to ask that all counsel refrain from making any derogatory remarks with respect to any other counsel. I have no desire for this hearing to degenerate into a dog fight. Do you have another witness?

Mr. SULLIVAN. That is all I have.

Mr. JOSELOFF. I have another witness, Mr. Examiner.

Exam. BAKER. Very well.

Mr. JOSELOFF. Mr. Duffy.

H. R. DUFFY, being first duly sworn, testified as follows:

1241

Direct examination by Mr. JOSELOFF:

Q. Give your name and address to the reporter, please.

A. H. R. Duffy, 185 East 33rd Street, Paterson, New Jersey.

Q. What is your occupation, Mr. Duffy?

A. Secretary, Arrow Carrier Corporation.

Q. How long have you been associated with Arrow Carrier Corporation?

A. Going on 17 years.

Q. Will you explain what your duties are and have been with the Arrow Carrier Corporation over that period of time?

A. My first duties were those of a solicitor. Later I handled the erection of terminals and the setting up of routes, et cetera. I have handled all matters before the Pennsylvania Public Service Commission relative to rights within the State of Pennsylvania, along with rate matters; and since 1936 I have handled the majority of the matters before the Interstate Commerce Commission.

Q. What has been your connection or your association in the motor-truck field or in the transportation field prior to your 17 years of association with Arrow Carriers Corporation?

A. Well, in my association with transportation since 1908, with the American Express Company: I spent about 6 years with that company. Up until 1918 I worked for others. After that period

I was in the trucking business for myself, from 1918 to 1923.

1242 Q. Are you a practitioner before the Interstate Commerce Commission?

A. I am not. I practice under Rule 1 (b).

Q. What is that rule, Mr. Duffy?

A. An officer of a corporation can represent the corporation before the Commission.

Q. And as such, have you attended hearings before the Interstate Commerce Commission?

A. I have.

Q. From your occupation and duties, are you in a position to know of your own personal knowledge of competing forms of transportation with Arrow Carrier Corporation?

A. I am.

Q. I show you an exhibit entitled "Exhibit of principal motor common carriers operating in competition with Arrow Carrier Corporation and other motor common carriers composing a part of Associated Transport, Inc." and ask you whether or not that was prepared pursuant to your direction and control?

A. I prepared the data attached to the map.

**MR. JOSELOFF.** I ask that this be marked for identification, please.

**EXAM. BAKER.** The document described will be marked for identification as "Applicant's Exhibit No. 19."

(Exhibit No. 19, Witness Duffy, marked for identification.)

1243

**By Mr. JOSELOFF:**

**Q.** Incidentally, going back a moment to your qualifications, are you a member of any committees of any nature in connection with motor carriers?

**A.** I am a member of the Pennsylvania Motor Truck Association Rate Classification Committee. I also handled the rate questions relative to eastern Pennsylvania, which is known as the Eastern Pennsylvania Rate Group of the Middle Atlantic Conference.

**Q.** Are you a member of any traffic bodies or clubs?

**A.** The Wyoming Valley Traffic Club of Wilkes Barre, Pennsylvania.

**Q.** Generally, what territory does that club function in and for?

**A.** In Lycoming, Lackawanna's, and Lucerne Counties in Pennsylvania.

**Q.** Referring to Exhibit No. 19, Mr. Duffy, will you be good enough to explain the nature of the exhibit, the manner in which it was prepared, and what it purports to portray?

**A.** Sheets 1, 2, 3, and 4 of the exhibit were prepared first—

**Q.** May I interrupt for just one second, Mr. Duffy, please? You are referring to the large sheet with numbers on it and the three sheets in order appended to the back of this exhibit; is that correct?

**A.** That is correct.

**Q.** All right. Will you please continue, then?

**A.** I have prepared this list first from known competitors whom I found listed in the National Motor Freight Classification.

1244 **In addition thereto; I added carriers that operated purely in interstate commerce between intrastate points. I have not added a complete list of all competition with our operating area.**

**Q.** Now, after you did select the names of carriers as set forth in this exhibit, what did you do next in order to determine whether to list the carrier and set forth its particular place in this exhibit.

**A.** First, I designated as "A" the regular route competition in our area. Secondly, I designated as "B" the irregular route competition in our area. I then designated a number for each carrier.

**Q.** And those symbols were arbitrarily chosen by you, Mr. Duffy, for explanatory purposes?

A. That is correct.

Q. Looking at page 1 of your exhibit, will you just, for reference purposes and to illustrate it, explain one or two carriers listed thereon and tell us what they mean.

A. Well, you can take No. 2. It is classified as a class A carrier. That is a regular route operator. The name of the Company is Allentown-Easton Motor Express. The main office is in Allentown, Pennsylvania. From there I designated on one of the three maps attached thereto in what area that carrier competed with our company.

Q. Now, suppose you carry that through. You are referring now to carrier 2, class "A," Allentown-Easton Motor Express, Allentown, Pennsylvania; is that correct?

A. Correct.

Q. Now, suppose you carry that through and show how this exhibit should be referred to.

A. If you will refer to the map, the first map of the exhibit, radiating out of New York, you will note that carrier 2 serves the terminal area of Phillipsburg, New Jersey.

Q. Any other terminal area? Will you look at Reading, Pennsylvania, and see if that refers to carrier 2, or is it No. 24 instead of No. 2?

A. That is No. 2. That is correct. He serves Reading, Pennsylvania, Allentown, Pennsylvania. I note it is not carried forward.

Q. Do you wish to correct this page of the exhibit to include No. 2, opposite the Allentown, Pennsylvania, block?

A. That is correct.

Q. Now, will you run that same carrier through on the other maps, as you have described them, in this exhibit, and see if it applies?

A. First, you will find 2 from Phillipsburg to Allentown, 2 from Phillipsburg to Reading, Stroudsburg and to Scranton.

Q. These numbers and letters are keyed in with the three pages of maps that are attached to this exhibit; is that correct?

A. That is correct.

1246 Q. Will you, for the sake of the record, carry through Carrier B. Let us take No. 7, for example, which is listed on page 1 as the Academy Storage & Warehouse Company of Newark, New Jersey. Will you explain how that is to be interpreted?

A. I think if you will look through the whole of the three maps here, you will find No. 7 carried throughout every terminal area. The reason for that is that the Academy Storage & Warehouse Company has pending an application, in which they

claim grandfather rights between all points in the states of New York, New Jersey, Pennsylvania, Connecticut, Massachusetts, Rhode Island, et cetera.

Q. To divert for just a moment to this pending application, have you knowledge of that pending application, of your own personal knowledge?

A. I attended the hearing, sir.

Q. You attended the hearing?

A. Correct.

Q. Do you know whether or not, from your own knowledge, the Commission has actually entered an order on these pending applications?

A. They have entered a compliance order, to which exceptions were filed. The matter is still pending.

Q. Now, looking at the maps in the front of the exhibit—

A. Mr. Joseloff, may I correct that? I did not mean a compliance order. I meant a recommended report and order, 1247 rather than a compliance order.

Q. Thank you. Now, will you explain just what these maps purport to portray? I have in mind one with New York on the right-hand side, and in a big semicircular block after that Binghamton, New York, and the third, Phillipsburg, New Jersey.

A. The first map is supposed to portray competition between the New York metropolitan area on the one hand and these terminal points within a radius of 10 miles thereof on the other. The second map is to show competition between Binghamton, New York, and a radius of 10 miles from there on the one hand, to our terminal areas, and a 10-mile radius thereof in Pennsylvania. The third map portrays competition between Phillipsburg, New Jersey, and a radius of 10 miles thereof to the terminal set forth there and a radius of 10 miles thereof, on the other.

Q. Why were those three points selected as you have selected them here?

A. The request was made that the exhibit be drawn up accordingly.

Q. I mean, is there anything particular in the operations of the Arrow Carrier Corporation which would lend itself to a portrayal of competition in this particular?

A. Yes; there is. One is for competition from New York Metropolitan area on the one hand and points in Pennsylvania on the other, and on the other hand, you have competition 1248 from Phillipsburg, New Jersey, and points in a 10-mile radius thereof, on the one hand, to points in Pennsylvania, on the other, and the same thing with Binghamton.

Q. Do they reflect the traffic trend of the Arrow Carrier Corporation?

A. That is correct.

Q. Now, do you have any further comment or clarification to make on this Exhibit No. 19?

A. Yes; I do. I think there should be some clarification made to indicate that the carrier could operate in interstate commerce between intrastate points.

Q. You have some carriers listed on this exhibit?

A. That is correct; yes, sir.

Q. Will you please clarify the record and the exhibit, having that in mind?

A. No. 3, Alto Trucking Company of West Hazleton, Pennsylvania. No. 30, M. A. Clark, State College, Pennsylvania. No. 31, Central Storage & Transfer Company, Harrisburg, Pennsylvania. No. 47, Peter J. Freas, Allentown, Pennsylvania. No. 59, Gregg's Motor Lines, Scranton, Pennsylvania. No. 64, Hall's Motor Transit Company, Sunbury, Pennsylvania.

No. 69, Heffelfinger Freight Lines, Myerstown, Pennsylvania. No. 85, Keystone Express & Storage Company, Lancaster, Pennsylvania. No. 86, Kuhn's Transfer, Inc., Wilkes-Barre, Pennsylvania. No. 148, Zearfoss Transfer Company, Hazleton, Pennsylvania.

Q. Aside from those you have listed, are there any other carriers listed in your exhibit which do an interstate business but over intrastate routes listed in this exhibit?

A. No; I think that clears up the exhibit, so far as that is concerned.

Exam. BAKER. May I interrupt for a moment? Are any of the carriers that you have named entered on these charts at the front of the exhibit?

The WITNESS. They should not be.

Exam. BAKER. That is what I had in mind.

The WITNESS. They really should not be.

Exam. BAKER. If they are named, it is in error; is it not?

The WITNESS. That is correct. Taking one, for example, Alto, which is not listed on the maps.

Exam. BAKER. You may proceed, Mr. Joseloff.

By Mr. JOSELOFF:

Q. While we are on the point that the Examiner has called attention to, Mr. Duffy, if you will look at the map, the Phillipsburg, New Jersey, terminal area to Stroudsburg, Pennsylvania, I think we find a No. 1 there. Is that an error?

1250 A. Allentown-Bangor Motor Express operates between Phillipsburg and Allentown on the one hand, and from Allentown to Stroudsburg and Bangor on the other.

Q. That is correct, then?

A. You will find that entered on Stroudsburg from Phillipsburg on the map. You will also find Allentown on the Phillipsburg map.

Q. Excuse me. I was in error on that. I thought you had named that as a carrier that we were just discussing, but I see that you had not. Will you continue, please?

A. I also believe that the exhibit should be cleared up so far as the commodity carriers are concerned, that is, carriers limited to a few commodities, rather than general commodities.

Q. Will you clear that up?

A. No. 10, American Transport Corporation, Kearny, New Jersey, Bolus Motor Lines, Scranton, Pennsylvania—

Q. Is that No. 16?

A. Yes; No. 16.

Q. Thank you.

A. No. 21, Sam Brown, Jersey Shore, Pennsylvania. No. 33, Paul Crebbs, Northumberland, Pennsylvania. No. 34, Collum Trucking Company, Jersey City, New Jersey. No. 38, Delaware Valley Transportation Company, Oxford, New Jersey. 1251 No. 45, Follmer Trucking Company, Danville, Pennsylvania. No. 50, Funston & Son, Muncy, Pennsylvania. No. 61, Geroulo Brothers, Allentown, Pennsylvania.

No. 76, Hoffman Motor Transportation Company, Harrison, New Jersey. No. 80, Interstate Dress Carriers, New York, N. Y. No. 98, Lock Haven Transfer Company, Lock Haven, Pennsylvania. No. 128, Allen T. Roberts, Walnutport, Pennsylvania. No. 133, Silver Lines, New York, N. Y. No. 141, West Motor Freight, Boyerstown, Pennsylvania. I would like to clear it up further to this extent—

Q. When you say "it," do you mean the exhibit?

A. The exhibit, sir.

Q. Thank you.

A. As to the footnote, with respect to carriers who have rights and seldom exercise them.

Q. In other words, are you now referring to your legend on page 4 of your exhibit, entitled "B-Competitors Possessing Operating Rights But Whose Activities Are Irregular, Or May Not Exercise Them"?

A. That is correct.

Q. Will you continue, please?

A. No. 4, American Carrier System, Newark, New Jersey.  
 No. 5, American Freight Dispatch, Newark, New Jersey.  
 1252 No. 22, B. & Z. Express Company, West New York, New  
 Jersey. No. 27, Carbondale Trucking Company, Whittany,  
 New Jersey. Funston & Son, Muncy, Pennsylvania.

Q. What is the number?

A. That is No. 50—Muncy, Pennsylvania. No. 56, Garford  
 Trucking Company, South River, New Jersey. No. 74, Highway  
 Freight, Jersey City, New Jersey. No. 77, International Motor  
 Freight, Paterson, New Jersey. No. 87, Lakeland Express, Dover,  
 New Jersey. No. 89, M. K. Laubach Transportation Company,  
 Phillipsburg, New Jersey.

No. 108, Monarch Motor Freight Lines, Newark, New Jersey.  
 No. 131, Schreiber Trucking, Inc., Pittsburgh, Pennsylvania. No.  
 132, Shipper's Forwarding Company, Akron, Ohio. No. 136,  
 Shenandoah Motor Freight, Shenandoah, Pennsylvania. No. 146,  
 White's Express, Bloomfield, New Jersey.

Q. Will you just explain what you mean more clearly with re-  
 ference to these carriers that you have just named as having  
 operating rights, but who may not exercise them?

A. Well, let us take the B. & Z. Express Company, West New  
 York, New Jersey. That is No. 22. He has a right to transport  
 silks, rayons, celanese, acetates, and commodities used in the  
 silk business between West New York, New Jersey and  
 1253 Allentown, Bethlehem, Easton, Pottsville, Reading, and  
 Pottstown, and the only time he exercises that right is when  
 he gets a truckload of freight.

Q. Then, if I understand you correctly, these carriers have the  
 right, but to your personal knowledge, you do not know as they  
 have exercised it often? Is that what you mean, Mr. Duffy?

A. That is correct. In other words, I will explain it this way,  
 that we know the shipper and we transport the freight overnight  
 in the truck, and the only time we do not get it is when he can  
 make up a truckload.

Q. Is there any further comment that you wish to make in fur-  
 ther explanation of or clarification of this Exhibit No. 19?

A. I might take another one for you. I might take the Ameri-  
 can Freight Dispatch, Newark, New Jersey. That is an opera-  
 tion on which a recommended report and order has been issued.  
 The operation, to my knowledge, has not been operated for at least  
 two years or more. However, some of the freight, which moves on  
 a bill of lading of the American Freight Dispatch, is transported  
 on vehicles of the Interstate Motor Freight System of Detroit,  
 Michigan.

Q. Now, with the explanation that you have made, can it be said that this exhibit contains a list of carriers by motor truck of commodities generally, both over irregular and regular routes, in competition with Arrow Motor Corporation, except as otherwise stated by you in clarification of this exhibit?

A. That is correct, sir.

Q. Now, is there any further clarification or correction that you wish to make on this exhibit, Mr. Duffy?

A. Not at the present time.

Exam. BAKER. Mr. Duffy, you mentioned the American Freight Dispatch. Is that a subsidiary of Interstate Motor Freight?

The WITNESS. From what I know of it, sir, it is, and a recommended report and order was issued after an informal hearing. Then there was an application filed by the Interstate Motor Freight System to purchase the operating rights. Then the matter was set aside and reopened, first, to determine what rights the American Freight Dispatch really had, but from its recommended report and order it has rights in the area designated by this exhibit.

Exam. BAKER. Do you have knowledge of any proceeding before the Section of Finance, in which the Interstate Motor Freight System sought authority to acquire control of American Freight Dispatch?

The WITNESS. Only to this extent, that I attended a hearing before the Interstate Commerce Commission in the application of the American Freight Dispatch, and it was there that I understood that there had been proceedings relative to the acquisition of that company by the Interstate Motor Freight System.

Exam. BAKER. Very well.

By Mr. JOSELOFF:

Q. Does this list contain the entire list of competition by motor carriers or transportation in general?

A. No; it does not.

Q. Excuse me. I have not finished the question.

A. I beg your pardon.

Q. Competition with Arrow Carrier Corporation.

A. No, sir. I would say that what we have here is our known competition, our best competition. In addition to that, we have many irregular route operations between New York and points in New Jersey on the one hand.

Q. You do not mean you had this—

A. No; we had competition. You spoke of the competitors.

Q. Yes; competitors.

A. We have competition of many operators. We have rights from the New York Metropolitan area and northern New Jersey on the one hand to points in Pennsylvania east of the Susquehanna River. There are many of these orders, and in addition to that, I would conservatively estimate that we have about 250 coal truckers, who haul coal from Pennsylvania to the metropolitan area and haul various types of commodities back, some general, some limited, and so forth; et cetera.

Q. What can you tell us of the competition of railroads  
1256 in the territory served by the Arrow Carrier Corporation?

A. Well, we have the Pennsylvania, Lehigh Valley, Jersey Central, Reading Company, D. L. & W. I would say that was it. In the northern part of Lockhaven, we have the New York Central.

Q. Is there a considerable amount of competition by means of private trucks of shippers in the territory serviced by Arrow Carrier Corporation?

A. There is some. I really do not know of any great amount of it.

Q. Do you know of your own knowledge that there is some competition?

A. There is some. ..

Q. Do you have the competition of express companies or forwarding companies in your territory?

A. We do. We have the Acme Fast Freight, the Universal Car Loading Company, and the National Car Loading Company. In addition to that, of course, we have the Railway Express Agency.

Q. Those transportation agencies are not listed in your Exhibit No. 19; are they?

A. No, sir.

Q. Now, then, going back to the source of your information  
set-up in Exhibit No. 19, I ask you whether or not the companies that you have listed here, from your own personal  
1257 knowledge, in addition to having operating rights, as you have set forth, actually do operate them at the present time?

A. That is correct, outside of, as I said, irregular route, and some that exercise them only occasionally.

Q. With those explanations, would you say, from your own personal knowledge, you know that they are exercising those right today?

A. Yes, sir.

Q. How extensive is the competition of contract carriers with the Arrow Carrier Corporation?

A. I would say it is about the same as private operation. I do not believe it is very extensive.

Q. You have not listed any contract carrier competition in your Exhibit No. 19; have you?

A. No, sir.

Q. You are acquainted, are you not, with the number of companies in the proposed unification, in its present application, to some extent?

A. Not totally acquainted with them.

Q. I mean, you know the number of companies that are involved in this application?

A. I know about eight, to be honest.

Q. Well, answering that, I would say that that is all there are. Can you tell us, please, from your knowledge of the operations of Arrow Carrier Corporation, whether or not there  
1258 is any competition existing at the present time between the Arrow Carrier Corporation and any one or more of the companies in this proposed unification?

A. The only one I know of is Barnwell. Barnwell has a right between New York, by U. S. Highway No. 1 and 22, to Reading, Pennsylvania, and thence by 422 to Harrisburg, and also from Reading, the extent of our company, by U. S. Highway No. 222 to Ephrata, Pennsylvania.

Q. With reference to the competition of Barnwell, what amount, if you can state, is it with regard to the entire business of the Arrow Carrier Corporation?

A. Practically nothing.

Q. Now, is there any other competition between Arrow and other members of the proposed unification?

A. There is only one point, and that is between Binghamton, New York, and New York, New York, and Moran has a right between those two points.

Q. Of how much relative importance is the amount of business of Arrow between those two points, as compared with total volume of business?

A. Well, the best way to explain it, I think, is that we have around 240 pieces of equipment, and we operate two to Binghamton, New York.

Q. Is there any further competition of the nature that you have just been discussing?

1259 A. No; not that I know of, sir.

Q. Then, what can you tell us of any elimination of that type of competition, if the proposed unification be approved, so far as the Arrow Carrier Corporation is concerned?

A. I just don't understand your question, Mr. Joseloff.

Q. Well, I will reframe it. Perhaps it is a little ambiguous. I want to know whether, in your opinion, and from your knowledge

of the business of the Arrow Carrier Corporation, and on the basis of your previous statements, there would be any elimination of competition between Arrow Carrier Corporation and these other companies in the proposed unification, if the proposed unification be approved.

A. I don't think there would be any. So far as I understand it, I doubt as to whether there would be any. I might enlarge upon that statement by saying the reason for that would be that the only two carriers involved which are competitive go beyond the area which we serve.

Q. Is there substantial competition with Arrow on the part of so called intrastate operators who handle interstate traffic, and who may have filed registration statements with the Commission?

A. Yes; quite a lot of it, sir.

Q. And is it possible to determine from the files of the Commission the number and extent of that type of competition?

A. You could to the extent of that which you know. That 1260 would be about the only way you could.

Q. In other words, what I meant to ask you is whether or not that type of information, so far as you know, is in the files of the Interstate Commerce Commission.

A. Do you mean relative to the registration of the operation?

Q. I mean whether or not the information based on the filing of the registration papers would indicate the routes of these intrastate carriers.

A. I think it would, sir.

Q. Where would you find that?

A. Only in those that are filed on form MBC-6. I think for Pennsylvania you might find that in the Philadelphia office of the Interstate Commerce Commission.

Q. In any event, you have not listed that type of competition in this exhibit; have you?

A. I have listed it, but I have already explained it.

Mr. JOSELOFF. That is all.

Exam. BAKER. We will suspend until 2:15.

(Whereupon, at 12:55 o'clock p. m. a recess was taken until 2:15 o'clock p. m.)

1261

AFTERNOON SESSION—2:15 P. M.

Exam. BAKER. Come to order please. Is Mr. Duffy here?

Mr. JOSELOFF. Yes; he is, sir.

H. R. DUFFY, resumed the stand and testified further as follows:

Mr. GLENN. Mr. Examiner, would this be a convenient time for me to enter an appearance?

Exam. BAKER. Yes; it would.

Mr. GLENN. I want to enter an appearance for the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, for which organization Mr. O'Brien has been present during part of the proceedings. I am appearing in his stead. My name is James A. Glenn, 736 Bowen Building. Mr. O'Brien has been appointed on a wage and hour board by the government, and that requires him to be away.

Exam. BAKER. Are you registered to practice before the Commission?

Mr. GLENN. I have not been admitted to practice before the Commission. I have been admitted before the District Court in Ohio, United States Court, and in the District of Columbia.

Exam. BAKER. Have you participated in any other proceedings before this Commission?

Mr. GLENN. No; I have not.

Exam. BAKER. You will be permitted to appear in this 1262 proceeding. If you desire to participate in any others, you should make appropriate application to the Secretary for admission.

Mr. GLENN. Thank you.

Exam. BAKER. Has the applicant completed its direct examination of this witness?

Mr. JOSELOFF. We have, sir.

Exam. BAKER. Cross-examine.

Cross-examination by Mr. MACDONALD:

Q. Mr. Duffy, can you state the amount of interstate business carried by Arrow Carrier Corporation, in which the commodity would be silk?

A. It would only be a hazard, a guess, but I would say about 30 to 35 per cent.

Q. That would be business between Pennsylvania points and points in what states?

A. New York, New Jersey, and Pennsylvania. That is including your intrastate.

Q. That is including intrastate?

A. That is correct.

Q. You can not distinguish between interstate and intrastate silk traffic?

A. No; that would be hard to do.

Q. Do you, from the nature of the restriction on silk imports, expect a diminution of your silk traffic?

1263 A. Well, there will be, as far as raw silk is concerned.

Q. Do you anticipate that that will affect your traffic volume?

A. It would affect our average rate more than anything else.

Q. In other words, you expect to supply whatever deficiency in volume occurs with other types of freight at a lower rate class; is that it?

A. Well, at the present time there is such a demand for truck transportation, I don't expect any loss in volume, but I would expect a loss in the average rate.

Q. That volume will be more in industrial traffic, will it, than in silk, which it has been.

A. That is correct.

Q. Will that be largely intrastate traffic, or will there be interstate traffic?

A. Interstate.

Q. Can you give me an indication of the points between which this traffic will be carried?

A. Interstate?

Q. Yes; the volume that makes up a part of your total.

A. Well, the silk area of Pennsylvania, practically the area we cover, is what is known as the textile area of Pennsylvania; so there will be no particular point that will be affected. It will be the whole area.

Q. Insofar as the industrial materials which you carry are concerned, can you state whether or not there are any  
1264 general directions of movement of that material?

A. I just don't understand what you mean by "general directions."

Exam. BAKER. Keep up your voice, Mr. Duffy.

The WITNESS. Yes.

By Mr. MACDONALD:

Q. For example, will there be from Pennsylvania industrial points into New York City or into the New York metropolitan area?

A. I believe it will be both—both from New York metropolitan area and northern New Jersey to Pennsylvania points, and from Pennsylvania points to northern New Jersey and the metropolitan area of New York.

Q. You distinguish in Exhibit No. 19 certain carriers which operate intrastate having interstate authorizations.

A. That is correct.

Q. Are these carriers engaged mainly in intrastate business?

A. Well, that is their main source of revenue, but they pick up between points on their intrastate routes, and at either end of the route they make transfers to interstate carriers.

Q. Do they also receive from interstate carriers?

A. That is correct, sir.

**Q.** Does the Arrow Carrier Corporation have any great volume of interchange business?

**A.** The volume of our interchange business is from Pennsylvania and New Jersey on the one hand to the New England states, and that is handled by through tariffs with three carriers, in which individual tariffs are filed, in conjunction with our company. That is the Textile Motor Express of Paterson, New Jersey, the New England Carrier Corporation, Paterson, New Jersey, and Adley Express of New Haven, Connecticut.

**Q.** Is that largely textile movement?

**A.** No; that is general commodities.

**Q.** Assuming that the application in this proceeding is granted, how do you anticipate that these commodities will move in the future?

**A.** I would say they would move the same way, due to the fact that ever since the Motor Carrier Act, the shippers have become educated in routing their freight, that is, designating the interline carrier.

**Q.** Is it your expectation, then, that the Arrow Carrier Corporation, which would then be part of Associated Transport, Inc., would short-haul itself; in other words, carry part of the way, and then transfer to another carrier?

**A.** We would have to, if we were so instructed.

**Q.** That would depend on the existence of through rates?

**A.** Not necessarily.

**Q.** So far as cost to the shipper is concerned?

**A.** Not necessarily. The shippers have their own favorite carriers that they like to interchange with, and that comes from the fact that, maybe, a consignee will recommend a certain carrier, and they are naturally routed that way, and we will have to follow their routing instructions.

**Q.** If no joint tariff is adopted as to that second carrier, will the shipper pay a higher cost?

**A.** If there was no joint tariff published, we would charge the proportionate rate, as set forth in the Middle Atlantic tariffs.

**Q.** I will ask you to state whether or not this Exhibit No. 19 gives any indication of the volume of business done by the companies named therein?

**A.** It does not.

**Q.** I will ask you to state if there is any information contained in the exhibit showing the number of vehicles owned or operated by each of any of the carriers?

**A.** There is no such information.

**Q.** Regarding the eliminations or qualifications of carriers which you indicated in going over the exhibit, is it correct to

assume that you do not consider those that you identify as special commodity haulers in competition with the Arrow Carrier Corporation?

A. No, sir; we do consider them as heavy competition of the Arrow Carrier Corporation on that particular commodity to which they are limited.

Q. How many commodities generally does the Arrow Carrier Corporation carry?

1267 A. Every known commodity that is in the classification, or analogous thereto.

Q. How many of those commodities are carried in any great bulk?

Mr. JOSELOFF. Do you mean in any great amount, Mr. Macdonald?

Mr. MACDONALD. Perhaps that is more precise; yes.

A. Well, I would say chemicals, various types of oils, cable——

By Mr. MACDONALD:

Q. I am afraid you did not understand me. Of all of the commodities listed on the tariff, I assume that some would be more frequently in traffic movement than others. How many commodities would you say that the Arrow Carrier Corporation handled in great quantity?

A. That would be almost impossible to make any statement on.

Q. There are quite a few?

A. Yes, sir.

Q. Then, insofar as special carrier commodities are concerned, their competition is limited to the commodity that they carry?

A. That is correct.

Q. Is it your statement or belief that the Arrow Carrier Corporation does not have considerable interchange traffic to points south of its territory?

A. Our interchange traffic to the south is made through our own terminals in Pennsylvania. We pick up and distribute freight for Barnwell Brothers, who operate from the south  
1268 into our terminals, at Sunbury, Fort Fort, which is a suburb of Wilkes Barre, and Scranton, Pennsylvania. There we make distribution for them and we pick up for them and there truck leaves our terminals.

Q. In regard to the intrastate carriage which you have indicated as having interstate rights, would a portion of their business be the receipt of exchange freight from the south, for distribution in Pennsylvania?

A. Some of it would be; yes.

Q. So far as your interstate business is concerned, and by that I mean traffic originating in Pennsylvania points moving to New

Jersey and New York, are Barnwell and Horton authorized to pick that up and carry it to destination from the Pennsylvania points?

A. Yes; but not by way of New York.

Q. They are restricted in some way there?

A. Well, they operate, say, from Baltimore up through York, Pennsylvania, then Harrisburg, up route No. 11, all the way through to Scranton.

Q. Do they not have other route in the eastern section of Pennsylvania?

A. Barnwell has a route between New York, as I said, and Easton, Allentown, Bethlehem, Reading, and Harrisburg, and then they go south from there, down through Lancaster, and York.

1269 Q. Their movements are not particularly northward when they get into that eastern part of your territory?

A. No; the movements we handle from them are directly to the south, through Pennsylvania up into New England—not through New York or New Jersey.

Q. Referring to the chart maps in Exhibit No. 19, will you state whether or not the actual operations of the carriers indicated by numbers on these routes indicate that they do pick-up and deliver freight between the points indicated on the chart?

A. That is correct.

Q. In any case, is the information based upon application only of the carriers to the Commission?

A. Well, as I stated before, in this list that I have made here, I have only named what we know to be our known competition; so therefore it is from actual contact with that in competition that that is placed in there.

Q. And the exhibit classifies Carrier No. 81, the Interstate Motor Freight System, and Carrier No. 84, the Keeshin Motor Express, as Class A, which, according to the footnote, means that they are nonactive competitors?

A. Correct.

Q. Referring to your charts, what do they show as to the operations of Carrier No. 84, the Keeshin Motor Express?

A. Carrier No. 84, Keeshin Motor Express, would indicate only from Binghamton to New York.

1270 Q. Is it within your personal knowledge that they pick-up freight in Binghamton for New York City?

A. Yes, sir. In fact, we were situated in their particular terminal in Binghamton prior to going into our own terminal.

Q. Do you have extensive operation from Binghamton to New York?

A. No; not extensive. I would say it is about two trucks a night; that is all.

Q. That is the extent of the competition of Keeshin?

A. That is correct.

Q. And that is the only route upon which they are shown here?

A. Yes, sir.

Q. Referring to the other carrier I mentioned, No. 81, the Interstate Motor Freight System, will you state the nature of the operations of the Interstate between Allentown and New York City?

A. The Interstate Motor Freight System runs from New York City via U. S. Highway No. 1 and 22 to Phillipsburg, New Jersey, over U. S. Highway No. 22, through Phillipsburg, Easton, Bethlehem, Allentown, and Reading, then down U. S. Route No. 22 to Ephrata, Pennsylvania. That is as far as we are interested. Now, from Reading, Pennsylvania, to Harrisburg, Pennsylvania, they will also operate over Route No. 422, which is in direct competition with us.

1217 Q. At what points do they maintain terminals?

A. They do not maintain any terminals. They pull into carriers' terminals and drop off freight for distribution. They have other carriers pick up for them, and as they come through, they relieve them of that freight.

Q. What would be the general direction of their traffic, then?

A. The traffic would be either eastbound from Pennsylvania points, or westbound from Pennsylvania points to points in Ohio and Michigan.

Q. Do you know of your own personal knowledge that they have considerable operations from Pennsylvania points east, so far as freight originating in those Pennsylvania points is concerned?

A. No; I would not say that their freight originating from the east is very heavy. I would say that they do originate freight going westbound to a greater extent.

Q. In that regard they would not be competitive with Arrow, would they?

A. Oh, yes; certainly.

Q. Freight going westbound out of the territory?

A. When I said "westbound," I meant from New York, N. Y.

Q. Oh, I am sorry. I misunderstood you. Referring to carrier No. 79, the Interstate Magazine Hauling Corporation, do you know whether or not this carrier carries magazines, newspapers, and movie films, and the like?

1272 A. The Interstate Magazine Hauling Corporation was just issued an order by Division No. 5, granting them general

commodity rights between New York, Scranton, Wilkes-Barre, and Pittston, Pennsylvania.

Q. My question was directed to your personal knowledge of their actual operations.

A. Well, all I know is that they haul magazines, newspapers and periodicals, as well as wax and syrups, from the New York area to Pennsylvania, and the only commodity I know that they are hauling back is newspaper supplements from the International Coloring and Printing Company of Parsons, Pennsylvania.

Q. Is there any carrier operating over practically the same territory as the Arrow Carrier Corporation?

A. Oh, yes. I would say the largest carrier among them would be the Richards Motor Freight Lines of Scranton, Pennsylvania.

Q. Are there any in that group with gross revenues equal to those of Arrow Carrier Corporation?

A. Well, I would not know just what the operating revenue of the company is exactly.

Q. You were referring to Arrow when you said that?

A. Yes.

MR. JOSELOFF. Excuse me. May I get this straight for the record? Did I understand you to say that you know the operating revenue of Arrow, but you do not know it of the other companies that Mr. MacDonald asked you about.

1273 THE WITNESS. He did not ask me that question. He asked me whether or not there are any carriers in that group that had the operating revenue of the Arrow Carrier—equal to the operating revenue of the Arrow Carrier.

By MR. MACDONALD:

Q. I believe your answer indicated that you did not know the operating revenue of Arrow.

A. I did not know the exact operating revenue of Arrow Carrier; so, therefore, I didn't say—

MR. MACDONALD. I think that shows on the record, Mr. Joseloff.

MR. JOSELOFF. I just wanted to get it clear, so that I understood his answer.

By MR. MACDONALD:

Q. In that group of carriers operating in about the same territory, are there any which are largely special commodity haulers?

A. Well, outside of the ones that I mentioned, I have not included those special commodity haulers in the exhibit.

Q. You do not consider the Interstate Magazine Hauling Corporation as a special commodity hauler?

A. No; I do not, not under its present rights.

Q. I believe you base your evidence as to this exhibit on your own personal knowledge of the operations of these carriers; do you not?

A. Much of it is, yes.

Q. But there are some cases where it is drawn from the 1274 records of the Commission?

A. That is correct.

Q. And in those cases it might be based on applications rather than certificate?

A. Well, I will say applications wherein the operations are still effective.

Q. In other words, you mean you know that they are actually operating over the territory they claim to be operating over?

A. That is right, sir.

Q. In those cases, too, you mean you know of your own actual knowledge that they are operating?

A. To some extent, I know as general knowledge. I don't know as to actual point to point transportation.

Q. As to your testimony in regard to this exhibit devoted to the existence of competition with the Arrow Carrier Corporation only?

A. That is correct.

Mr. MACDONALD. Mr. Examiner, before concluding my cross-examination, I would like to offer counsel an opportunity to amend the description of this exhibit, which reads "Exhibit of principal motor common carriers operating in competition with Arrow Carrier Corporation and other common carriers composing a part of Associated Transport, Inc." which is misleading, on the ground 1275 that it does not relate to the other motor carriers, and they are as yet not a part of Associated Transport, Inc.

Mr. SULLIVAN. I think we are willing to stand on that description as is.

Exam. BAKER. I believe the witness has testified that certain of the other carriers are, to a small degree, operating in the same territory as Arrow, such as Barnwell and Moran Transportation Lines. I think the explanation in the record is sufficient.

By Mr. MACDONALD:

Q. You mentioned some competition, Mr. Duffy, in regard to railroads. Would you say that, as a general rule, railroads are competitive with truck, motor truck carriage, on the price, the cost per shipment?

A. Oh, yes.

Q. Or in service, keeping in mind the time element?

A. Not in all cases. For instance, we have Pennsylvania Railroad service and Lehigh Valley Railroad service from Wilkes-Barre to New York overnight, which is competitive with truck.

Q. That includes door-to-door delivery?

A. Yes, sir; where the rate is 45 cents a hundred or more.

Q. In other words, there has to be a quantity limitation?

A. No; it has to be a railroad rate of 45 cents a hundred or more.

Q. That refers to the class of goods?

A. That is correct.

1275 Q. So far as interstate business is concerned, I believe you testified that there was, with the exception of two routes, no competition between this Arrow Carrier Corporation and others of the lines concerned in this application?

A. That is correct, sir.

Q. Is that true as to business moving south from points in Pennsylvania through which Horton, Barnwell and Southeastern pass, to points of destination in the south?

A. Ask the question again. Clear it up for me.

Mr. MACDONALD. I will ask the reporter to read it.

Exam. BAKER. Will you read the question, please, Mr. Reporter?

(Question read.)

Mr. JOSELOFF. I think, perhaps, if you will read the preliminary question, Mr. Reporter, it would tend to clarify it.

Exam. BAKER. Yes.

Mr. JOSELOFF. The question before that.

(The reporter read as follows: "Q. So far as interstate business is concerned, I believe you testified that there was, with the exception of two routes, no competition between this Arrow Carrier Corporation and others of the lines concerned in this application? "A. That is correct, sir. "Q. Is that true as to

1277 business moving south from points in Pennsylvania through which Horton, Barnwell and Southeastern pass, to points of destination in the south?")

A. That is not true, for the simple reason that we do not compete with either Horton or Barnwell for traffic for the south.

By Mr. MACDONALD:

Q. You do not expect traffic originating in eastern Pennsylvania points destined to the south to be transferred on an exchange basis?

A. We merely perform a local pickup and delivery service for Barnwell Brothers at three terminals in the state of Pennsylvania.

Q. So far as interstate routes are concerned, then, the Arrow Carrier Corporation will add nothing to this unification; will it?

A. Well, Arrow Carrier could add considerable to the unification by consolidating the Barnwell and Horton freight through the Arrow terminals at these various terminal points, thus performing at particular terminals what is performed by the two carriers.

Q. In other words, it has to do with the service feature, rather than the route feature; it is local service to eastern Pennsylvania, rather than in any continuation of interstate routes; is it not?

A. Well, let me clear this up. Just let me clear it my way, if you will. What I mean by my explanation is that Horton comes from the south, and Barnwell comes from the south, 1278 into our particular territory over the same route. At the same points where Horton may maintain a terminal of his own, Barnwell operates into our terminal. Now, one carrier could operate north instead of two, and instead of another carrier having terminals of their own, it all could be worked, pick-up and delivery could be worked right out of our own particular terminals. That would be adding to the economy.

Q. Then, would you say that essentially the value of Arrow to this merger is in its intrastate routes and the terminal facilities which it will make available to the other lines in the merger?

A. No; I go further than that. I might also add that it would serve both of those companies where their operations in the south were worked through New Jersey into New York.

Q. In what way?

A. By having a continuation of the movement over our lines to Pennsylvania, the eastern part of the state of Pennsylvania.

Q. What would happen to the freight when it arrived there?

A. It would be distributed through our eastern terminals.

Q. Intrastate in Pennsylvania, and to whatever local station in New Jersey or nearby?

A. That is correct.

Q. So that essentially it is a distribution system in its position in this merger?

A. I don't know what its position is, sir. I don't want 1279 to go so far as to take the initiative by stating that, but

I do see where the Arrow Carrier Corporation in the picture could save a considerable amount of operation expense. Further than that, I don't know anything more about it.

Exam. BAKER. Mr Duffy, are all of Arrow's interstate operating rights duplicated by the rights of Horton or Barnwell?

The WITNESS. No, sir.

Exam. BAKER. Do you have many routes over which neither of those companies operates?

The WITNESS. We have routes over which neither of those companies operates, and they have, in turn, routes which we don't operate.

Exam. BAKER. I just wanted to clarify that point.

The WITNESS. Yes, sir.

Mr. MACDONALD. That is all I have, Mr. Examiner.

Exam. BAKER. Is there any further cross-examination? Have you any further questions for the applicant?

Redirect examination by Mr. JOSELOFF:

Q. I just want to ask you if you know approximately the operating revenue of Arrow.

A. I understand it is about \$1,500,000.

Q. But you do not know the exact amount?

A. No; I don't know the exact figure.

Q. That is \$1,500,000 per year?

1280 A. Yes, sir.

Mr. JOSELOFF. That is all. I just wanted to clear that point.

Exam. BAKER. The witness is excused.

(Witness excused.)

Mr. JOSELOFF. Mr. Examiner, during the testimony of Mr. Arbour on competition in New England, you made a request of him that he submit a statement giving the names of the carriers operating between specific points, and on which Mr. Arbour stated the total revenues for clarification of the record. Mr. Arbour gave that testimony in his direct examination; for example, that there were so many carriers operating between Boston, Mass., and North Adams, Mass., with total revenues of so many dollars.

Exam. BAKER. Yes; I recall that.

Mr. JOSELOFF. You asked for a statement, and I have it here, for clarification of the record, and would like to submit it at this time. I think it breaks it down in accordance with the desires of all parties. I do not know whether to merely submit it as a statement as requested, or perhaps it would facilitate matters by offering it as an exhibit. Either way would be satisfactory to the applicant.

Exam. BAKER. Since Mr. Arbour is here, it would be preferable if he would resume the stand, I believe, and identify the statement as being in support of his testimony.

1281 Mr. JOSELOFF. Take the stand, Mr. Arbour.

Exam. BAKER. Do you wish this marked for identification?

Mr. JOSELOFF. Yes, please.

**Exam. BAKER.** The document entitled "List of Class I common carriers of general commodities maintaining service between representative points as indicated," et cetera, will be marked for identification as "Applicant's Exhibit No. 20."

(Exhibit No. 20, marked for identification.)

**Mr. JOSELOFF.** If I may go back to the previous exhibit for one moment, I ask that it be introduced as Applicant's Exhibit No. 19.

**Mr. MACDONALD.** We make the customary objection, Mr. Examiner, that the exhibit does not show all the facts it purports to show, and indicates certain other facts which are not based upon evidence or facts, and that, as a whole, it is incomplete and misleading.

**Exam. BAKER.** Your objection will be overruled. Applicant's Exhibit No. 19 will be received in evidence.

(Exhibit No. 19, Witness Duffy, received in evidence.)

**EVERETT J. ARBOUR**, was recalled to the stand and testified as follows:

Direct examination (resumed) by **Mr. JOSELOFF**:

**Q.** Mr. Arbour, pursuant to the request of the Examiner, 1282 in accordance with your direct testimony on the total operating revenues of carriers operating between Boston, Mass., and various other towns, did you cause to be prepared this exhibit, entitled "List of Class I common carriers of general commodities maintaining service between representative points as indicated within the same area as served by Consolidated Motor Lines, Incorporated, and McCarthy Freight System, Incorporated"?

**A.** I did.

**Q.** Would you state from what sources this information has been obtained?

**A.** From the files of the Commission.

**Mr. JOSELOFF.** Those are all the questions I have.

**Mr. WIPRUD.** May I inquire, Mr. Examiner?

**Exam. BAKER.** You may.

Cross-examination (resumed) by **Mr. WIPRUD**:

**Q.** Mr. Arbour, take column No. 2 of your exhibit, "total operating revenue," for the year shown for the A. B. & C. Motor Transportation Company, Inc., \$407,224, are we to understand that that represents the amount of operating revenue between the points shown on the exhibit?

**A.** No; that is the operating revenue as shown in the Interstate Commerce Commission files for the total operation of Interstate from their annual reports.

Q. And that is also true of the other carriers listed on the exhibit?

1283 A. That is right.

Q. There has been no effort at all to break down the operating revenue to show the amount as to the points which are given upon the exhibit?

A. I do not know of any way you could do that, unless you went right to the companies themselves.

Q. And these figures here also include operations of companies listed in the area other than the area involved in the proposed unification?

A. Yes.

Mr. WIPRUD. Those are all the questions we have.

Exam. BAKER. Do you have any further questions?

Mr. JOSELOFF. No; I would like to offer this as an exhibit.

Mr. WIPRUD. We have the same objection to this exhibit that we had in regard to the testimony of this witness on the other exhibit, and that is that the information shown thereon is misleading, and does not purport to show the amount of operating revenue of these carriers between the points shown on the exhibit.

Mr. JOSELOFF. And I have the same answer as I have previously made, that the information is not misleading, but has been clarified, and the objection really goes to the weight and not to the admissibility.

Exam. BAKER. I believe the Commission is competent to  
1284 assess the appropriate weight to the evidence. The Exhibit will be received in evidence.

(Exhibit No. 20, Witness Arbour, received in evidence.)

Exam. BAKER. For Arbour, there is one matter that I wanted to ask you about, if you will bear with me for a moment.

The WITNESS. Certainly.

Exam. BAKER. Statement No. 4120, which is a publication of the Bureau of Statistics of the Interstate Commerce Commission, lists certain carriers in the New England region, showing data with respect to the miles of regular routes operated by those carriers. This information was compiled from annual reports of motor carriers concerned. I notice that under Consolidated Motor Lines, Inc., it is indicated that it operates over 227,313 route miles, whereas, the McCarthy Freight System, Inc., is indicated as operating over 11,600 miles. In view of the great difference in those figures, as indicated, I wonder if you can state upon what basis you computed the figure of 227,000 route miles for Consolidated.

The WITNESS. Well, Mr. Examiner, the first time I saw that report was last Saturday, and I noticed that, and I asked Mr. Scott to verify it. He went back to Hartford this morning, and

I believe he is verifying it and sending the information to

1285 Mr. Sullivan; so I don't know what the answer is.

Mr. SULLIVAN. I have an explanation, Mr. Examiner.

Exam. BAKER. I would appreciate counsel giving the explanation, if he has it.

Mr. SULLIVAN. The explanation is this, that the Consolidated Motor Lines, in making out their annual report, because as to their understanding of what the request of the Commission is in its instructions with respect to annual reports, reported a thousand routes—it is somewhere between a thousand and eleven hundred routes, as being the number of routes it operates, and that was reached in this fashion. Let us take Boston, Providence, Hartford, New York. I will take those as an example. They reduced Boston to New York as a route, Providence to New York as a route, and Hartford to New York as a route, even though Providence and Hartford were intermediate points on the Boston to New York route. Likewise, every little town along that route would be listed as a separate route in compiling the mileage. They start in Boston. Boston to New York is "X" number of miles. They then move to the next nearest town to New York out of Boston, and that town to New York is "Y" number of miles, being, maybe, 10 miles less than the Boston to New York route, and so on down the line, they had it from all their points, and at some points they

have two or three alternative routes; so those route miles are  
1286 all set in as different routes, with the result that we find a grand total of a thousand and some routes, with mileages; for the Boston to New York route alone, I think they ran into fifty or sixty thousand. Mr. Scott has checked the total on his 1939 report.

The explanation then moves on to the McCarthy Freight System. They have some duplicate mileage because of alternate routes, but that is not done in the same fashion as Consolidated. Among the various carriers whose mileages are set forth in that report, that are within this group, I find that no two carriers have answered that question in substantially the same fashion.

Exam. BAKER. Thank you, Mr. Sullivan. I believe that is sufficient. You may be excused, Mr. Arbour.

(Witness excused.)

Mr. COCHRAN. I would like to ask Mr. Lawson one or two questions, if I may.

Exam. BAKER. Very well.

Mr. COCHRAN. Mr. LAWSON.

J. D. LAWSON, was called to the stand and testified as follows.

Direct examination by Mr. COCHRAN:

Q. You have been previously sworn?

A. Yes, sir.

1287 Q. State, if you can, Mr. Lawson, the percentage of freight movement over Horton Motor Lines on the so-called long haul east-south movement on the one hand, and the east-west short haul or local movement on the other.

A. For the month of July 1941, the company transported 28,300 tons of traffic, of which 62 per cent was what is commonly known as the east-south or interterritorial traffic. Thirty-eight per cent of that figure was what is known as intraterritorial or local traffic. By that, I mean it was moving between points on our line in the Middle Atlantic or Eastern Trunk Line territory or in the Southern territory, as those territories are defined by the Interstate Commerce Commission.

I might also add that possibly one or two per cent of that is represented as traffic moving between the south and the Pittsburgh area, which would ordinarily be considered as interterritorial traffic, but which we consider, for the purpose of showing the information here, as local business. It is not competitive with any of the carriers involved here.

Q. Will you explain that last statement?

A. It is not competitive to the extent that none of the carriers involved in this application, and none, to my information or knowledge as far as competitive carriers reflected by the exhibits previously introduced by me, operate between the Southern 1288 territory and Pittsburgh in competition with our lines.

Q. Have you any other statement you wish to make on that, Mr. Lawson?

A. I have not, sir.

Mr. COCHRAN. That is all.

Exam. BAKER. Is there any cross-examination?

Mr. MACDONALD. Yes, sir.

Cross-examination by Mr. MACDONALD:

Q. Would you say that the month of July is a representative period to be used as a basis for ascertaining these percentages?

A. I guess it would, under present conditions, sir; so it may not ordinarily; that is, during ordinary times in the movement of traffic, that month might be light. Usually, the traffic is rather even. I think it is. It is the latest information, however, that was available to me for this particular hearing.

Q. Do you think that the percentage of the figures would be the same for a six-month period?

A. Approximately; yes.

Q. During the fall of the year, too?

A. Yes; I would say so, that it would be fairly representative and approximately the same.

Q. Is July a month in which textiles are moving in great quantity from the south to the north?

A. Well, at the present time that is true; yes.

1289 Q. That is, July of this year?

A. Yes, sir.

Q. Can you state what percentage or what proportion of that 62 per cent east-south movement is exchanged at the northern end, or is exchanged or received at the northern end?

A. No; I cannot. I did not break down the information. It was only gathered to reflect the amount of tonnage offered our line.

Q. You have such figures available?

A. I have not such figures available here. Of course, they are available; yes.

Q. They can be ascertained?

A. Yes; there will be a record of the interchange traffic.

Q. Will you state, if you know, whether most carriers keep such records?

A. Do you mean as to—

Q. The percentage of interchange traffic and how it moves.

A. Well, I can only say that I know there are carriers that keep interchange records, and it seems to me they could ascertain the percentages of business, if they made an appropriate computation, but I do not know; I couldn't say; I couldn't tell you which carriers might have such data.

Q. Do the books of your company indicate which carriers are used in exchange of lading and the proportion of the tonnage that each one gets?

1290 A. Yes. Do you mean by proportion of the tonnage, the amount of business?

Q. The amount of business that each one receives.

A. Yes, sir.

Q. Can you state as to the 38 per cent interterritorial approximately what amount of this is two-carrier or more than one-carrier lading?

A. No; I could not, because that information was not developed in that manner.

Mr. MACDONALD. That is all I have, Mr. Examiner.

Mr. COCHRAN. I have just one question.

Mr. MILLER. I would like to ask one question. May I go ahead?

Mr. COCHRAN. Surely.

By Mr. MILLER:

Q. Mr. Lawson, could you give us the break-down as to this 38 per cent, showing how much of it was in Eastern territory and how much of it was in what you call Southern territory?

A. My recollection is that it is about evenly divided. It may be 20 and 18.

Mr. MILLER. That is all.

Exam. BAKER. 20 is which?

The WITNESS. The Eastern, and 18 is the South.

Redirect examination by Mr. COCHRAN:

1291 Q. Mr. Lawson, state, if you know, the approximate percentage of interchange freight of the Horton Motor Lines over any given period that you may have in mind.

A. I don't know.

Q. I do not expect you to state it exactly, but approximately.

A. I don't know what it was for the month of July.

Q. I said any period of time, if you know. If you do not know, say so, and that is all. If you do not have the exact information, will you give an approximate figure?

A. I am trying to recall the data on that. I think it is something around, including all types of carriers, pick-up and delivery, what we call pick-up and delivery, in terminal areas, between 35 and 40 percent.

Mr. COCHRAN. That is all.

Exam. BAKER. Are there any further questions of this witness? The witness is excused.

(Witness excused.)

Mr. SULLIVAN. That concludes the witnesses for the applicant. Mr. Examiner. We would like—we can check the mathematical calculation—to wait a little while before making an amendment to the 22 application as to the total number of shares, so if we can do that a little later, we would like to reserve the privilege.

Exam. BAKER. It is understood, though, is it not, that you will request an appropriate amendment to issue common  
1292 stock in conversion of the preferred stock?

Mr. SULLIVAN. That is right. We simply wanted to check the mathematics back against it.

Exam. BAKER. Very well.

Mr. SULLIVAN. Mr. Examiner, I have here a communication from Mr. W. J. Williamson, general traffic manager of Sears, Roebuck & Company. It is addressed to the Interstate Commerce Commission, and is in the nature of an expression of his opinion with respect to this matter and in the form of supporting the contentions of the applicant. I realize that it is not proper to offer it in evidence, but because it is addressed to the Commission I tender it to the Examiner for such disposition of it as he feels proper under the circumstances.

**Exam. BAKER.** I would prefer that you tender that to the Section of Mails and Files, or some officer of the Commission. I do not feel that it is any part of this hearing. I could not receive it in evidence.

**Mr. SULLIVAN.** I appreciate that, because it is apparently the intention of Mr. Williamson, in forwarding it to us, that we could do something of that sort. I am merely carrying out the wishes of the author, and I realize that we must do precisely as you suggest.

**Exam. BAKER.** I suggest that you turn it over to some officer who is not concerned directly with these proceedings.

**Mr. SULLIVAN.** We will do that, now that I have taken 1293 care of it as far as his wishes are concerned.

**Exam. BAKER.** Before proceeding with any interveners, I would like to request that the applicant furnish a statement in Exhibit form, setting forth the following:

First, the number of regular route miles over which each of the eight carriers involved in the proposed unification operates.

Second, the aggregate number of regular route miles over which applicant would operate after consolidation of the operating rights of such carriers, and elimination of duplication.

Is that clear?

**Mr. SULLIVAN.** I think so, with one exception, at least to me, and that is in dealing with the regular miles, route miles, you do not mean to refer to the form in which their certificates may be issued. You want the actual miles covered by the operations of the companies?

**Exam. BAKER.** Highway miles.

**Mr. SULLIVAN.** Highway miles; so that wherever there is a duplication in the form of separate routes granted in a certificate of a particular company, that is to be eliminated in this schedule?

**Exam. BAKER.** That is correct. Prior to the close of the hearing, I will fix the date for the furnishing of any additional information that may be requested. It is not expected that you 1294 will furnish that prior to the close of the hearing. In case you do have it, of course, it will be received.

**Mr. SULLIVAN.** We will be able to supply that practically immediately.

**Exam. BAKER.** There are a few things that I feel it would be helpful to get a stipulation on. With respect to the annual reports of certain motor carriers, may it be stipulated that the parties and the Commission may refer to all annual reports by motor carriers, including those involved in this proceeding? may be helpful for comparative purposes comparing, for instance,

certain other large motor carriers' operations with the proposed operation.

Mr. SULLIVAN. The applicant will so stipulate.

Mr. WIPRUD. That is agreeable.

Exam. BAKER. Is that agreeable to all parties? Let the record so show. May it also be stipulated that certain statistical publications of the Commission concerning motor carriers may be similarly referred to; namely, statement No. 4120, entitled "Statistics of Class I motor carriers for the year ended December 31, 1939," and, secondly, statement No. Q-800, for the calendar year 1940, entitled "Revenues, expenses, and statistics of Class I motor carriers' property." May it be so stipulated?

Mr. SULLIVAN. The applicant will so stipulate.

1295 Mr. WIPRUD. That is agreeable.

Exam. BAKER. Let the record so show, that all parties present agree to the stipulation suggested. I understand the applicant now rests?

Mr. SULLIVAN. The applicant rests.

Exam. BAKER. Mr. Miller, do you have your witnesses available at this time?

Mr. MILLER. I think so.

Exam. BAKER. Well, before you begin with your witnesses, I suggest we take a recess for 10 minutes. (A short recess was taken.)

1296 Exam. BAKER. Come to order, gentlemen. You may proceed, Mr. Miller.

Mr. MILLER. Mr. Examiner, before presenting any of my witnesses, I believe it might be well for me to make a statement as to the purpose for which their testimony is offered. You will recall that our intervention in this matter was for the purpose of protecting our interest wherever it might appear. We specifically stated that our position was not to either sponsor or oppose the application.

Primerily, this application is to be determined on whether or not the proposed unification, is consistent with the public interest and whether or not the unification will unduly restrain competition. In order to make a proper determination of these issues, we believe that it is essential that the record show the effect which this unification will have on other carriers. I believe that the witnesses I am offering can assist the Commission in making that determination. I want it understood that our original position in this matter as an intervenor is not being changed; our purpose is still to protect our interest wherever it appears.

My clients are "rugged individualists" exactly like the clients of applicant. I do not believe that any of my clients will testify

that the proposed unification will put them out of business.  
1297 They possess an enormous amount of "intestinal fortitude" and while they may be apprehensive as to the result which this merger will have on their business, they are aggressive and have never asked for quarter in a competitive fight. As to whether such a competitive fight will be in the public interest is a matter which your Commission can best determine. It may be that some of the testimony my witnesses may offer may support the application and for that I am not embarrassed. I feel the Commission is entitled to all the facts and I offer them for that purpose.

Mr. SULLIVAN. I may say, on behalf of the applicant, in view of the very fair statement of counsel with reference to his intervention for the purpose that he states, that if the testimony is given in that light, we feel it will be helpful to the Commission, as well as to the applicant.

Exam. BAKER. You may call your first witness.

Mr. MILLER. It will be Mr. Dempsey.

J. B. DEMPSEY, being first duly sworn, testified as follows.

Direct examination by Mr. MILLER:

Q. Will you please state your name and address?

A. I am J. B. Dempsey, 212 First National Bank Building, Kingsboro, Tennessee.

Q. You are the same person of that name as named in the intervention here for 22 carriers, approximately?

1298 A. Yes.

Q. And is your testimony going to be on behalf of those carriers for whom we have an intervention?

A. On behalf of those carriers for whom we have entered intervention, except those who are here to speak for themselves, and I understand there will be some to testify.

Exam. BAKER. Perhaps you had better be explicit, Mr. Dempsey, as to the exceptions.

Mr. MILLER. They will be offered as witnesses subsequently.

Mr. SULLIVAN. Who—the exceptions?

Mr. MILLER. Yes; they are here.

Exam. BAKER. Very well. With that understanding, the record will be clear, I believe.

By Mr. MILLER:

Q. Mr. Dempsey, what is your position with the company that you are connected with?

A. General traffic manager of Mason & Dixon Line.

Q. You are also a director of that company?

A. Yes.

Q. How long have you been general manager and a director of the Mason & Dixon Lines?

A. Approximately six years.

Q. General traffic manager of the Mason & Dixon Lines? Approximately how long have you been general traffic manager of the Mason & Dixon Lines?

A. Approximately that long. I may have my dates 1299 wrong, but since January 15, 1937.

Q. Prior to that time, what was your occupation?

A. Publishing agent, just prior to that time, of the Southern Motor Carriers Rate Conference at Atlanta, Georgia.

Q. What are your duties with reference to your present occupation?

A. My duties are those duties of a traffic manager, as well as many others.

Q. How long have the Mason & Dixon Lines been engaged in business?

A. Since about 1932.

Q. What was the character of business; what commodities do they transport?

A. A common carrier in the transportation of commodities generally, with those exceptions that are indicated in our application on Docket 59583, which runs to high explosives, et cetera.

Q. Where does your company operate generally?

A. They operate from New York City to Atlanta, Georgia, and from New York and between Charlotte, North Carolina, and intermediate points, through the gateway of Asheville; also Lynchburg, Danville, Greensboro, High Point, on into Charlotte, straight down from New York over various highways into Atlanta, Georgia, including such points as Knoxville, Chattanooga, Rome, Dalton, and points over on 11 (e), such as 1300 Morristown, Greenville, and so forth and so on.

Q. Are you generally familiar with what is involved in this proceeding?

A. Yes.

Q. Are you familiar with the operations in a general way, especially insofar as competition is concerned, of Barnwell Brothers, Horton Motor Lines, and Southeastern Motor Lines between the east and the south?

A. Yes.

Q. Likewise, are you familiar in a general way with the operations of the other carriers proposed to be merged in the Associate Transport?

A. Yes.

Q. In the conduct of your business, have you become acquainted with the competitive situation with respect to the business of your company?

A. Yes, indeed.

Q. Does your company engage in the interchange of freight with other common carriers?

A. To the extent of approximately 225 connecting carriers.

Exam. BAKER. What was that figure?

The WITNESS. Approximately 225. I am sorry I do not have the exact number before me.

Exam. BAKER. 225 carrier?

The WITNESS. Yes.

1301

By Mr. MILLER:

Q. What percentage would you estimate of your company's total is in interchange with other companies?

A. In the south, interchange with, and what I mean by that, is delivered to approximately three to one received from. That is, the tonnage our connections deliver to us, approximately two to one. In the east it will run approximately the same.

Q. By three to one delivered to other carriers, just what do you mean?

A. What I mean by that is this, that we interchange with them approximately three pounds to every pound they do with us, or, in the reverse direction, it is about two to one that we get from them, that they deliver to us.

Q. That is still not very clear. By three to one, do you mean three out of four shipments that the company handles are interchange?

A. I am speaking of pounds.

Q. Three out of every four pounds are interchanged?

A. That is right. The point I am trying to make is this, that the greater portion of our business is interchange business.

Exam. BAKER. I am not sure that I understand this very well. I gather that so far as your interchange business is concerned, in connection with the rate, you have three to one that you  
1302 deliver to the interchange carrier three times as much freight as—

The WITNESS. As we get from them.

Exam. BAKER. Yes; but Mr. Miller's original question was, of the total volume of business handled by Mason & Dixon Lines, what percentage of that business is interchanged. Can you state that?

The WITNESS. I am very sorry, I don't have those figures with me, but I will say that our interchange business, both delivered to

and received from, will be three to one, as compared with the business that we originated locally. Perhaps that explains it better.

Mr. SULLIVAN. I wonder if I might ask one question to clear this up in my mind, so that I will not have to touch on it in cross-examination, and maybe everybody will understand it.

Mr. MILLER. I agree.

Mr. SULLIVAN. Are we to understand from what you say that, assuming you have four pounds of freight, three pounds of those four pounds will be interchange business, and that one pound of the four will be handled one hundred per cent over your own lines?

The WITNESS. That is it exactly.

Mr. SULLIVAN. Thank you.

The WITNESS. I am sorry I could not make myself clear to you, because I did not have the figures to do it with, but 1303 that is it.

By Mr. MILLER:

Q. Generally, does your company consider such interchange traffic desirable?

A. Well, it has to be desirable. In some places it is more desirable than ~~others~~, but in order to serve the public we have to take care of that vast territory in interchanging traffic, whether we like it or not.

Q. Some of the traffic is profitable, and some of it is not.

A. A good bit of it is profitable. It has given us some business.

Q. What are your company's principal points of interchange?

A. I think it might be well to divide them as between the east and the south. Beginning with the east, New York is one of our largest interchange points, and within the New York district. As we come on down through Pennsylvania, we do quite a bit of interchange at Allentown, Scranton, and Reading, and so forth. Our main points would be Philadelphia, Wilmington, and Baltimore, with some at Washington. Then we move on down south to Winchester, Roanoke, some at Bristol; then we hit the deep south, and we begin interchanging at Knoxville, Chattanooga, and some at Rome.

Exam. BAKER. Is that Rome, Georgia?

The WITNESS. Rome, Georgia, and a very great interchange at Atlanta. Then we move over into Carolina, a considerable interchange business at Charlotte, High Point, and Asheville.

1304 By Mr. MILLER:

Q. From your experience, Mr. Dempsey, in the trucking industry, and especially with reference to your experience and knowledge of motor freight interchange, what do you believe the

result of the proposed unification of the carriers involved in this proceeding will be upon those companies' present existing interchange with other carriers?

Mr. SULLIVAN. I think the question is rather too broad, in view of the qualifications of the witness shown here, but I do not want to interfere with the questions.

The WITNESS. Mr. Examiner, I can answer that in—

Mr. SULLIVAN. I do not doubt that you can answer it, but I mean I am not in a position to know just what we are driving at from the question. I do not like to object.

Exam. BAKER. Mr. Reporter, will you read the question?

(Question read.)

Mr. SULLIVAN. That might be anybody in the United States. That is what is getting me. I believe it is a little indefinite. It is to me.

Mr. MILLER. Change the last part "with other carriers" to "with the Mason & Dixon Lines."

Exam. BAKER. Suppose you restate your question, then.

Mr. MILLER. If you prefer, I will lay another foundation.

Exam. BAKER. I beg your pardon?

Mr. MILLER. If you prefer, I will come back to this.

Exam. BAKER. The main thing, to my mind, is the meaning of your question. I believe that you stated in connection with your last indication, it may meet the objection.

By Mr. MILLER:

Q. Mr. Dempsey, what do you believe the result of the proposed unification of the carriers in this proceeding will be upon the company you represent?

A. I am very glad you put it that way, because I can say this with respect to the Mason & Dixon Lines: We interchange considerable traffic with Consolidated Motor Lines at both New York and Philadelphia. If this consolidation comes about, very naturally it stands to reason that we will not be getting a very large percentage of that traffic, and that is for this reason, that through the eight carriers involved in this consolidation, they will find means of getting that traffic to or from its destination by using one or the other members of that consolidation. Now, I am speaking only of the east. Let us move down into the south.

There is one other member of this consolidation, namely, Transportation, Inc. We do considerable interchange with them into the deep south. I am now speaking of Atlanta, Georgia. They, through their recent purchase, some months ago, of what is commonly known as the M. & A., serve a good many plants located within the deep south. We will take, for instance, Pascagoula, Alabama, Mobile, and on to New Orleans. Our tonnage

1306 interchange with that particular carrier in the south is considerable. It stands to reason that we are going to lose that, and if you will permit me to move on up to Knoxville, where we do a considerable interchange business with that particular carrier, Transportation, Inc., they serve Alcoa, Tennessee, the Aluminum Company of America. We have always worked with them in the interchange of that vital defense traffic at Knoxville, and our interchange tonnage at that point is considerable. If this consolidation comes about, they will then have a unified system that they can move it over Southeastern out of Knoxville on east, or even, if they prefer, they can trot it back across the mountains of North Carolina, and move it through that gateway, but, in any event, we lose the business.

Q. Mr. Dempsey, would you look with favor upon interchanging freight with a carrier which that interchange carrier could handle direct from origin to destination?

A. May I ask that that question be stated again?

Q. Would your company look with favor upon interchanging freight with a carrier which that carrier could handle direct from origin to destination?

A. I don't think that I can recall any instance where we have been favored with any of that kind of business.

Q. I do not believe you get the point. Does your company look with favor upon interchanging traffic with its competitors?

1307 A. Well, certainly. We interchange traffic every day with competitors.

Q. Operating from origin to destination?

A. Oh, yes; very often. We always do, especially in the case of bill of lading routings.

Q. Are you familiar with the general custom followed by motor carriers with respect to the interchange of unrouted traffic?

A. Yes; I think I am.

Q. Will you explain further what the carriers usually do with such traffic that is unrouted in picking out their connecting line?

A. They give it to their preferred connections.

Q. And by "preferred connections," what do you mean?

A. By "preferred connections" I mean those lines that they may have found it the best policy for them to line up with to hold the traffic, by paying them divisions, or what not—mostly divisions.

Mr. SULLIVAN. Do you mean divisions of the revenue?

The WITNESS. Yes; and since you asked me that question, may I go on and elaborate a little on that? In this consolidation case, it stands to reason that the divisions of revenue are going to enter into it in a very vast way, that these carriers today may be scrap-

ping among themselves over divisions, but when this comes about, that will be all healed, and we boys on the outside will take a licking.

1308

By Mr. MILLER:

Q. Is routed traffic sometimes diverted to a favored connection?

A. State that again.

Q. Is routed traffic sometimes diverted to a favored connection?

A. Only in cases where service enters into it, as far as the Mason & Dixon Lines are concerned. If I get your question correctly, if it is routed and we see that we can get quicker service, but in every case we always notify the shipper as to why we did that.

Q. Do you know of instances where traffic has been routed over the Mason & Dixon Lines, but which the originating carrier diverted to some other competitor?

A. Oh, yes.

Q. Are those situations very frequent?

A. Quite frequent, especially in movements out of the east.

Q. Now, assuming that this proposed unification is authorized and consummated, how will the position of your company compare with the unified carriers with respect to securing unrouted traffic from connecting lines?

A. Well, I doubt seriously if any carrier involved in this consolidation is going to favor Mason & Dixon Lines, or, as far as that goes, any other east-south carrier operating within the same territory, with any unrouted traffic. It stands to reason  
1309 that they are not going to do that. As a matter of fact, they are not doing that today, because of this consolidation. It even started back with the first move. They sometimes route traffic against us.

Mr. SULLIVAN. I would have to object to that as a conclusion, for which no foundation has been laid.

Exam. BAKER. I am sorry. I did not get all of that statement. Will the reporter, please read Mr. Dempsey's last statement?

(Answer read.)

Mr. SULLIVAN. My point, Mr. Examiner, is that, the traffic he is talking about he has not enjoyed for more than a year. He can testify to that, but when he starts assigning reasons as to why he has not been enjoying that traffic for the last year or so, I think we ought to have some basis for assigning the reasons.

Exam. BAKER. The objection is well founded. The remarks in that regard will be stricken.

Mr. MILLER. I believe those are all the questions I have.

Exam. BAKER. Is there any cross-examination?

Mr. SULLIVAN. Do you want to cross-examine him?

Mr. MACDONALD. Yes. Do you want me to go on first?

Mr. SULLIVAN. Perhaps it would be preferable for the applicant to cross-examine last, in view of his position.

Mr. MACDONALD. Very well.

1310

Cross-examination by Mr. MACDONALD:

Q. You stated, I believe, Mr. Dempsey, that there would be some effect on the division of revenue between carriers caused by this merger. Would you explain for the record what you anticipate the effect of the unification will be on this division of revenues?

A. You are speaking of the division of revenue between carriers?

Q. That is right.

A. What I anticipate is this, that being as powerful as they are, with the coverage that they will have, that they can tell us or any other carrier outside of that, "Here is your division;" if we are successful through solicitation in lining up the traffic, that would be, may I say, originated by Consolidated Motor Lines, then, in order to get that traffic we have to yield to whatever division they would want to put in against us. I am only using that as an example.

Q. Taking that example and referring to your testimony regarding the turning over of traffic to a competitor, if you originated the business in the New England area, would it be your practice, if this merger is effected, to originate that with Consolidated, making a transfer at New York or Philadelphia with some other carrier?

A. Well, it is very often the case that we have no control over who the originating carrier is, and I would like to  
1311 state, in answer to that, that while I do not at the moment have the specific names of the points, there are numerous points in the east, maybe in New England or upper New York State that are served by Consolidated Motor Lines, the only carrier serving that particular point that is a party to through rates.

Q. So that in order to—

A. And if I go out and solicit that business, it would not do me any good, because, naturally, it is going to move via the consolidation. I hope I have made myself clear.

Q. I believe so. Now, for business which you carry, say, between Kingsport and Philadelphia, would it be to your advantage—taking that particular route, rather than business moving over that route and consigned to or destined to Pittsburgh—would it be to your advantage to carry that freight from Kingsport instead of Baltimore, and then transfer it to the merged lines of transportation to Pittsburgh? Would you favor them over another

exchange carrier which you might find operating from Baltimore to Pittsburgh?

A. No, sir; I would not say that we would especially favor them, any more than we would any other carrier that could give the service.

Q. Would there be any disadvantage to you in turning over that forwarding to the merged lines at Baltimore?

A. I wouldn't say that there would be.

Q. Do you think that there would be any result from the 1312 knowledge which you have gained by the unified line as to the shipper concerned in the shipment, so as to be used for solicitation purposes?

A. I am glad you asked that question. I will go back and refer you to the old M. & A. That is a part of Transportation, Inc. If we go out and solicit business, there are certain points down that line that they serve, that we worked hard to get that business, and if we turn that information over to them, then we do not see it any more at the point of origin.

Q. Is that because they can offer through route service?

A. No; that is because they go out and solicit it for themselves.

Q. Can you indicate, if you know, the amount of your exchange business which currently is exchanged to or received from these eight companies here concerned?

A. No; I am sorry I don't have the figures that you are asking for, because we do not do any business at all with Horton Motor Lines. They won't concur in our rates.

Q. For business originating in upper New York—

A. Pardon me. If you will ask me about any particular carrier, perhaps I can answer your question more clearly.

Q. Well, by way of example, can you give us any more figures with regard to Consolidated?

A. Yes.

Q. Would you do so, please—either dollar volume or percentage?

1313 A. Well, we motor carriers are always a little bit afraid to put out information like that, but—

Q. Well, in that case—

A. But I do have some figures showing Consolidated, received from and delivered to. Now, just what would you like to know?

Q. I want to know the tonnage that you think should be available, received from and delivered to Consolidated, at any point you want to name.

Exam. BAKER. If you have the dollars in connection with that tonnage, you might also state those, Mr. Dempsey.

The WITNESS. I am sorry; they did not put the dollars here, but I believe I do see some tonnage for the months of January, Feb-

ruary, March, April, May, June, and July. Would you like me to read that for each month?

By Mr. MACDONALD:

Q. Yes; if you will, please.

A. At New York we received from Consolidated Motor Lines for the month of January, 1941, 319 shipments, 176,374 pounds. We delivered to them 65 shipments, 124,710 pounds. For the month of February, we received from them 332 shipments, weighing 157,637 pounds, and we delivered to them 46 shipments, weighing 93,479 pounds. For the month of April, we received from— and from here on I will read them in sequence—325 shipments, 182,345 pounds; 42 shipments, 72,338 pounds.

1314 For the month of April we received 361 shipments, 220,207 pounds, and delivered 29 shipments, 22,464 pounds. For the month of May we received 351 shipments, 219,499 pounds, and delivered 25 shipments, 22,732 pounds. For the month of June we received 285 shipments, 162,525 pounds, and delivered 20 shipments, 80,600 pounds.

For the month of July we received from 297 shipments, 155,538 pounds, and delivered 27 shipments, 43,055 pounds. That would make a total in weight of received from Consolidated Motor Lines at New York, 1,274,126 pounds, and delivered to, 459,378.

Exam. BAKER. In connection with those figures, can you state at this time, Mr. Dempsey, the total number of pounds transported by Mason & Dixon Lines during that same period?

The WITNESS. Mr. Examiner, you mean the total tonnage?

Exam. BAKER. That is correct.

The WITNESS. Into the east?

Exam. BAKER. No; the total number of pounds handled by Mason & Dixon Lines during that same period of time.

The WITNESS. I am sorry, I do not have that information at the moment, but I can get that for you.

Exam. BAKER. It will be in your annual report filed with the Commission, but this happens to be the first six-month period.

The WITNESS. It will be.

1315 Exam. BAKER. The semiannual report, I mean.

The WITNESS. Quarterly report.

Exam. BAKER. The total of the first and second quarters. We have incorporated the quarterly reports in this record, but those reports are not so easily available as are the annual reports.

The WITNESS. We will be very glad to stipulate here that we will furnish you with that information.

EXAM. BAKER. I feel that you should. The figures that you gave, by themselves, to have appropriate weight accorded to them, should be accompanied by the total figures, in order that the Commission may know as to what proportion of your total business is involved in this interchange.

The WITNESS. We will be very glad to do that, sir.

Exam. BAKER. Will you furnish that to the Commission within 10 days from the close of these hearings?

The WITNESS. Yes.

Mr. MILLER. That is agreeable.

By Mr. MACDONALD:

Mr. Dempsey, have you finished your list of tonnage of exchange business with Consolidated?

A. Yes.

Q. At New York City?

A. That is right.

Q. Are there other points at which you interchange with Consolidated?

1316: A. Yes, sir. We interchange with Consolidated at Philadelphia, but I am sorry that I do not have the broken down figures, because that is all thrown into one general account, which is known as our 900 account.

Q. Can you state the relative proportion of that total to this total?

A. The great majority of it moves through New York.

Q. You have stated that you also have considerable interchange business with Transportation. Is there any other company of those eight with which you have considerable exchange arrangements?

A. Well, as far as Moran goes, our tariffs are restricted, and we only handle drugs. I believe it is, in connection with them, but the others in the east, I don't have available at the moment any information on them.

Q. You say your tariffs are restricted with Moran as to drugs. What do you mean by that?

A. The only through rates we have in connection with them, in connection with Moran, are on drugs. That is my recollection. I know it is on drugs. It may be a little broader description, but it comes under the drug list.

Mr. McDONALD. I believe the record will show that the testimony of the Moran witness this morning agrees that that is the fact.

Mr. SULLIVAN. I will stipulate that what he is saying  
1317 is correct.

By Mr. MACDONALD:

Q. Can you tell us why the tariff is so restricted?

A. Well, I can't just exactly say why it is. Maybe they thought they were not financially able to pay them their interchange, but just why it is, I don't know.

Q. It was not a matter of choice on your part, then?

A. No. In fact, we have quite a file in trying to get them to go along with us on interchange traffic generally, but they just would not answer it.

Q. Of the 1,274,126 pounds received from Consolidated in the six-month period which you covered, how much of that do you think you would receive if the merger were consummated?

A. Practically none of it.

Q. Can you give us your figures on your interchange with Transportation, from the other end of this system?

Mr. SULLIVAN. Mr. Macdonald, that happened to be a seven-month period.

Mr. MACDONALD. Oh, I beg your pardon.

Mr. SULLIVAN. You adopted mine, and somebody just corrected me. Will the reporter note that it is a seven-month period?

A. Mr. Macdonald, I am sorry I do not have all of our figures available on all of the junctions at which we do interchange freight with transportation, but I have some figures reflecting the tonnage interchange at Knoxville and Atlanta for the months of January through July, inclusive. We interchange with Transportation at numerous points, such as Asheville, Charlotte, and maybe others that I can not recall just now.

Q. Atlanta?

A. I have the figures at Atlanta for the six months that I have just stated.

Q. Would you care to give them to us, please?

Mr. SULLIVAN. Could we not just have them by totals, instead of months, or would it make any difference?

Mr. MACDONALD. That is satisfactory.

Exam. BAKER. State the total figures for the seven-month period.

The WITNESS. The total figures?

Exam. BAKER. Yes.

The WITNESS. My report indicates that we received from Transportation at Atlanta, Georgia, for the month of January through July, inclusive—

Exam. BAKER. 1941?

The WITNESS. 1941, total number of shipments, 403,275,145 pounds. We delivered to them—and please mark the difference—3,515 shipments, 1,151,910 pounds. At Knoxville, for the same

months, we received from Transportation 353 shipments weighing 280,897 pounds, and we delivered to Transportation 849 1319 shipments, weighing 434,360 pounds.

By Mr. MACDONALD:

Q. Over what other transportation line will the service offered by Transportation, Inc., be available to you, assuming that it would not be good policy to exchange with Transportation, Inc., after the merger is consummated?

A. At Knoxville the only other carrier serving Alcoa, Tennessee, which is the very huge plant of the American Aluminum Company of America, is the Hauser Freight Lines, a very small carrier. That is about the only one that we could interchange that particular traffic with. Silver Fleet Motor Express, of Louisville, Kentucky, also has the right at Alcoa, Tennessee, but they serve the north, across the river, through Louisville into that section, and because of that we interchange very little traffic with them on this national defense movement eastbound. Hauser Freight Lines, being a very small carrier, they do not have equipment that they can properly serve the plant with over at Alcoa, and it has resulted in pushing up a good many of these national defense movements in the last few months, that we have been able to interchange trailers with Transportation at Knoxville in the handling of that traffic. Naturally, we could not hope to secure much of that business after this consolidation.

Q. What have you to say as to the territory in which the freight originated, which is included in this figure of 1,551,910 pounds turned over to Transportation at Atlanta?

1320 A. May I ask that that question be stated again, please?

Mr. MACDONALD. Will you read the question?

(Question read.)

A. Practically all of that freight moving out of the eastern section of our operation. What I mean by that is out of the east, the Maryland-Virginia line.

Q. That would be territory served by lines concerned in this merger?

A. Yes, sir. In fact, may I say 98 per cent of it.

Q. I believe the Examiner has asked you to supply figures with regard to your total tonnage for the period under consideration, namely, the first seven months of the year 1941. Would you be willing to supply figures giving your tonnage or poundage of exchange freight with each of the carriers with which you exchange for all points of exchange?

A. Let me see if I get that straight.

Q. If that is too broad a question of study and investigation, would it be possible for you to provide the tonnage which you

exchange with all carriers with whom you exchange at the principal points of exchange?

A. We will be very glad to undertake to get that information, and can do it, but I doubt seriously that it would serve the purpose that you have in mind. However, I am not questioning the purpose for which you have it in mind, but I may say that I  
1321 believe, in order to do ourselves justice, in complying with the Examiner's request to also include the total tonnage of interchange freight received from and delivered to these various junctions, in addition to the breakdown that we have read into the record, and in addition to that our entire tonnage, if it is so desired.

Q. You would be willing, then, and it would be possible to secure those figures, should the Examiner deem it necessary for a proper decision?

A. We would supply those figures if the Examiner deems it necessary, but I would like to go on record that I hope the Examiner will not ask that, because that is rather personal information.

Q. Is that in the nature of trade secrets, more or less?

A. It is, with all motor carriers.

Q. And would it embarrass a carrier to give the amount of interchange at certain important junction points, without naming the carriers concerned in the exchange?

A. We have never considered it the best policy to reveal even such figures as that, but still, if it is insisted upon, we would not mind giving the total figures, but we are certainly not going to agree to give the breakdown of the figures for each individual connecting carrier, because there are so many elements that enter into that:

Mr. MACDONALD. That is all I have to ask.

Exam. BAKER. Is there any further cross examination?

1322

By Mr. SULLIVAN:

Q. Mr. Dempsey, in your testimony, when you referred to the interchange between your company and Transportation, Inc., at Atlanta, you injected into it a remark to the effect "please note the difference." I assume you meant by that for us to please note the fact that you gave Transportation in excess of 1,000,000 pounds during the 7-month period, and they only gave you 275,000 pounds. Is that what you wanted us to note?

A. Well, I am very glad—I was hoping that somebody else would do it besides you, but I am glad you brought it out.

Q. What is wrong with me?

A. I can answer that. I was especially anxious to get that in the record, and that is for this reason: That vast difference be-

tween what we delivered to and received there indicates that we solicit the freight up in that vast area in the east that is going to be controlled by this consolidation, that we are delivering to Transportation in Atlanta, that we would never see again.

Q. I mean, that is the point you want to make?

A. That is exactly it.

Q. Also that you gave a great deal of freight to them, much in excess of that which other people gave to you?

A. I am not complaining of that.

Q. All right. If we are to follow your reasoning that you just gave us with reference to that, what do you say as to  
1323 the situation between yourselves and Consolidated, where substantially the same thing is true, but in the reverse direction?

A. Consolidated, for the benefit of all of you, has not been playing ball with us since they first started this consolidation idea.

Q. I will give you a chance to answer that one. What do you mean by that, please, sir?

A. I meant just what I said.

Q. Please explain it, so I will not misunderstand it. Try it in some other language.

A. Will you outline the angle?

Q. The language, I said. I am not sure that I thoroughly understood you. I would like to have you state it in another way.

A. How would you like to have me state it?

Exam. BAKER. I think the record is clear as to what he means.

Mr. SULLIVAN. Then I will ask him as to my understanding of it.

By Mr. SULLIVAN:

Q. Do I understand that you say, first, the Transportation deal, or something. What did you mean by that "first?"

A. You were here.

Exam. BAKER. Just a moment.

1324 Mr. SULLIVAN. I would like to have that question answered.

Exam. BAKER. Identify it for the record.

The WITNESS. The first consolidation case. I don't recall, and I apologize for not having the docket number, but when there was quite—the first attempt that was made toward consolidation, back about a year ago, do you recall?

Mr. SULLIVAN. I remember there was such a one. It seems to me I heard about it.

Exam. BAKER. You refer to the application of the Transport Company to consolidate?

The WITNESS. I believe that is the correct name of it.

By Mr. SULLIVAN:

Q. Since that time, which you say was about a year or a year and a half ago, Consolidated has not played ball with you. What do you mean specifically by that?

A. Because they have been routing, so far as we have been able to see, most of their traffic in connection with the boys that they thought they were going to consolidate with.

Q. By that, you mean specifically whom?

A. I mean those that are in the consolidation.

Q. Name them, please.

A. You know them better than I do.

Q. Will you please name those whom they have been routing with?

A. Those named in the consolidation. You know them better than I do.

1325 EXAM. BAKER. Just answer the question. If you recall the names of the carriers that you refer to, will you state them?

The WITNESS. Well, I refer, specifically, then, to Horton Motor Lines, Barnwell, or any of the others.

By Mr. SULLIVAN:

Q. Then, am I to understand that Consolidated at the present time routs their freight to the south by Horton, by means of Barnwell and certain other carriers; is that it?

A. That is correct, and for your further information, we have just recently had complaints from some of our customers that where traffic was routed, we spent about \$16 in telephone calls in trying to locate the shipment, and found that they had given it to somebody else.

Q. Who are they that have given it to them?

A. I don't know. Horton, I believe.

Q. Do you know that?

A. I am not quoting exactly who it was. I am just making the statement.

Q. All right. Now, you say that was done last fall because they knew they were going to be in some kind of a deal.

A. That was not done last fall, the one I mentioned.

Q. When was that?

A. Oh, two or three weeks ago.

Q. All right. But you say that they took traffic away from you a year or a year and a half ago, because they wanted to  
1326 route it over Barnwell and Horton and other companies who might have been engaged in the transportation deal of last year; is that it?

A. That is right.

Q. Did you enjoy all of their exchange before that time?

A. I don't know just what percentage of it we did enjoy, but I know it has been dwindling.

Q. Has the business that you have given to Consolidated dwindled even during the first six months period of this year?

A. I don't have those figures.

Q. You read them to us. Why don't you?

A. The figures that I read speak for themselves.

Q. Well, assume those figures did dwindle from 124,000 in January, or something like that, to 22—

A. Something like what?

Exam. BAKER. Refer to the figures, Mr. Sullivan.

Mr. SULLIVAN. Well, I am not attempting to give the outbound.

By Mr. SULLIVAN:

Q. From 124,000 pounds in January to 43,000 pounds in July—well, I will call them back to you: 124,000 in January, 93,000 in February, 72,000 in March, 22,000 in April, 22,000 in May, back to 80,000 in June, and back to 40,000 in July. Was there some significance behind the dropping off of the figures in tonnage that you turned over to Consolidated?

1327 The WITNESS. May I insert a question in very compact summary, if the Examiner will permit me?

Exam. BAKER. Confine yourself to the question.

The WITNESS. Exactly, to save a lot of record, I make this statement, and I reiterate it, that Consolidated Motor Lines has not played with us since this consolidation came about. Now, as to just what percentage for each individual month, I don't have that information, but I know of routings of traffic that have been diverted. I do not have specifically before me right now the reference to that particular shipment, but I can get it if the Examiner would require it—not you.

Exam. BAKER. Mr. Reporter, will you read the question of Mr. Sullivan. I do not believe he understands the question.

Mr. SULLIVAN. I was just waiting for an answer to my question.

The WITNESS. Well, I am through.

Mr. SULLIVAN. Now, please answer my question.

The WITNESS. What is your question?

Exam. BAKER. Just a moment. Will you read the question, Mr. Reporter?

(Question read.)

A. The only significance that I know of is what I have told you. You get into a consolidation—

Q. I am speaking of tonnage.

A. That is all I know.

1328 Q. Is there some reason that you know of why you turned over a lessening amount of tonnage as you went along during the first seven months of this year?

A. Well, let me make this clear to you. We turned over to them every pound of freight that was routed in connection with them. Perhaps we simply did not have it.

Q. Then, you only give Consolidated that freight which is routed Consolidated. Is that what we are to understand?

A. We gave Consolidated all the freight that we had that we could turn over to Consolidated to points they served.

Q. Now, please. I don't want to enter into a controversy with you.

A. I notice that.

Mr. SULLIVAN. Mr. Examiner, I suggest that—

Exam. BAKER. Please confine yourself to answering the question.

The WITNESS. Thank you, Mr. Examiner. I will do that.

By Mr. SULLIVAN:

\* Q. Am I to understand that the freight that was turned over to Consolidated was, you stated a minute ago, only that freight which was routed Consolidated; or was it some additional freight?

A. I am quite sure that there was considerable additional unrouted freight that was turned over to them. I know that there was. I can not tell you exactly which they were.

Q. All right. That is enough. Now, did you have 1329 more freight destined for New England during this seven-month period that you have discussed, which you turned over to Consolidated?

A. May have.

Q. Well, do you know?

A. Well, we had considerable more freight, I am quite sure. I don't have those figures before me. Of course, Consolidated is not the only one operating up there, but they are the largest.

Q. Then you do turn freight over to carriers in New England, other than Consolidated Motor Lines?

A. Oh, yes.

Q. And do you turn your freight over to a number of carriers other than Consolidated?

A. Well, I don't know just how many there are, but there are quite a few up there, I think.

Q. McCarthy is not among that number; is he?

A. I don't think McCarthy serves New York.

Q. Do you find the service of these other carriers in New England as satisfactory as the Consolidated service?

A. As far as I am particularly concerned, or the Mason & Dixon Lines, we don't question complaints about service until they come to us from some shipper, and I do not have before me now any complaints that I can tell you about.

Q. These other carriers do not take freight that is routed  
1330 over your line, your other connections with the north do not take freight as Consolidated does, that is routed over your line and diverted to someone else?

A. I would not say that. They may.

Q. Why did you feel that it was so significant that you should mention it here, that one shipment you spoke of that was routed over your lines, and that Consolidated diverted apparently to someone else, if other carriers who were not concerned with this merger did the same thing?

A. May I answer that with a question? As long as I have been in this business, dealing with every connecting carrier that we have, and if you had been in it as long as I have, wouldn't you know the attitude of each and every one of them? I know the attitude of Consolidated. That is my only answer.

Q. What is the attitude of Consolidated?

A. I can't answer that.

Q. You can not answer that?

A. I can not answer that any further.

Exam. BAKER. We will take a recess for 10 minutes, gentlemen. (A short recess was taken.)

Exam. BAKER. Come to order, please.

Before proceeding with this witness, I would like to state that I believe we are getting into collateral matters here that are  
1331 not directly involved in this proceeding. Let us confine ourselves to the facts as they exist and as they are involved in this proposed unification. Leave out questions of attitudes or personalities of the parties concerned.

Mr. SULLIVAN. I accept the suggestion, and I am very much in accord with it; but I find myself in this position, Mr. Examiner, that when the witness makes a categorical statement that may be almost the result of a conclusion, I am fearful that he will leave a conclusion here without anything that explains the reason for the conclusion. However, I will try to follow your suggestion.

Exam. BAKER. I believe it has been gone into sufficiently.

Mr. SULLIVAN. I was going to move to something else. It may sound as though I am coming back again, but I assure you I have something else in mind when I ask the question.

By Mr. SULLIVAN:

Q. You feel, then, Mr. Dempsey, that for the past year and a half there has been substantially complete collaboration between the companies involved in this proposed unification, including complete collaboration as to the transfer of freight, exchange of information with respect to accounts, efforts to divert business from former connections to companies involved in this group, and so forth? Is that what I am to understand?

A. I would say that I could not say that there has been complete collaboration. I don't know to just what extent you mean by that, but there has been that sentiment.

1332 Q. Well, to give you the room that you apparently desire, can we say approximately complete collaboration?

A. I still can not answer you that it has approximated complete collaboration. All that I know is the effects up to now.

Q. Well, the effects up to now, then, in your opinion, are those which might have been reached by approximately complete collaboration?

A. The effects up to now are really the cause of what is going on, and that is all I can answer. That is my opinion.

Q. All right. Then, as to the situation, from your point of view, it would not or could not be worse off if this application were approved?

A. Why, it would be completely worse. It would be then a complete collaboration.

Q. All right; instead of one approximating complete.

A. Yes.

Q. All right. Now, what was the gross annual business for any recent period that you can name of the Mason & Dixon Line?

A. I don't have those figures with me.

Q. Well, your position with the company is what?

A. General traffic manager.

Q. And as such, is it an aid to you in your position—in order to fill your position effectively, you have to keep reasonable track of the gross revenue of the company; do you

1333 not?

A. That is right.

Q. Could you give us the figures for 1940, then?

A. I could not, because I don't have them with me.

Q. Well, could you approximate them for us?

A. I wouldn't like to do that.

Q. Could you give us the annual revenue for the year—

A. Not that we have anything to hide, but in answering that question, I would like to have the figures before me, to give you a complete answer. The quarterly reports with the Commission will give you that figure.

Q. Can you give me, within \$200,000, the gross receipts for 1940?

A. No; I cannot.

Q. Could you give them within \$500,000?

A. I have not the figures before me, sir.

Q. Will you please listen to my question? Could you give them within \$500,000?

A. I shall not attempt to give them to you within any limits.

Q. Could you, is that I asked you—not will you.

A. The quarterly report of the Commission will give you a complete answer on that.

Q. Will you please answer my question.

Exam. BAKER. Just answer it.

A. I am very sorry I do not have the information. If 1334 the Examiner requires me to give an estimate, which is a guess, I will be glad to do that.

Exam. BAKER. I am merely asking that you answer counsel's question, Mr. Dempsey. Can you state within \$500,000 the gross revenues of the Mason Dixon Line during the year 1940?

The WITNESS. No; not offhand.

By Mr. SULLIVAN:

Q. All right. Can you state it within a million dollars?

A. No.

Q. Within \$2,000,000?

A. No.

Q. How many connecting carriers did you say you had?

A. I would estimate around 225. It may be more, or maybe a few less.

Q. And that figure you recall as of what date? When did you make your check on the basis of which you give that figure?

A. Which figure is that?

Exam. BAKER. He is referring to the 225 carriers, I believe.

A. Well, that is just my opinion. There is not any figure at all. I just assume that we have got around 225; maybe more or less, connecting carriers.

By Mr. SULLIVAN:

Q. That is, you gave that figure based on your knowledge of the business, as general traffic manager?

A. That is right.

1335 Q. How great a territory geographically, without naming routes; can you tell us the general territory over which or through which the public may ship freight over the lines of the Mason & Dixon Lines and its approximately 225 connecting carriers?

A. The Mason & Dixon Lines hold themselves out to serve the public generally throughout the entire east, including New England and on into the deep south, including the nine southeastern states in particular, but, of course, we do haul freight when offered to points out in the Western Trunk Line territory.

Q. And is the service, in your opinion, as the traffic manager, which you render to the shipping public in the territory that you have described, a reasonable and adequate and satisfactory one from the shipper's point of view?

A. Well, I think so; yes.

Q. The territory that you have described, leaving out the Western Trunk Line territory, is approximately the territory covered in this proceeding; is it not?

A. I would say the territory that we serve and haul the majority of the freight that we do haul to and from would be involved in this proceeding.

Q. But your territory is even more extensive than the territory involved in this proceeding?

A. Very slightly, though.

Q. But it is more extensive?

1336 A. Very slightly.

Q. All right. Could you tell us the number of units operated by the Mason & Dixon Lines and its 225 carriers, collectively?

A. No, sir.

Q. It would run into the thousands, would it not?

A. Well, I don't know to what extent.

Q. Would it run into the thousands?

A. I couldn't answer that.

Q. Could you answer within 500?

A. I could not.

Q. Could you answer within a thousand?

A. I could not, in 10,000.

Q. Would you swear that they do not exceed a thousand?

A. I am testifying under oath already.

Q. Does it exceed a thousand?

A. I couldn't answer that. I don't know.

Q. Is there any part of the territory involved in this application to which your company and its 225 connecting carriers do not give service or could not give service, other than through lines of one of these eight companies?

A. Well, yes; there are some lines that we would have trouble giving service to.

Q. What part, geographically, of the territory would that be, rather broadly speaking?

A. Only geographically, and from my own opinion right  
1337 now, without getting at the detail of it, there are numerous

points that I think I have already testified to in the record that are served by Consolidated, that that was the only carrier that had through rates.

Q. Now, I am not speaking of rates, please.

A. At the same time, the same thing applies to Transportation within the deep south.

Q. All right. It is perhaps my fault that I did not ask the question properly. Excluding the question of through rates, as to physical operations, are there any points in the territory that we are just discussing where the Mason & Dixon Lines and connecting carriers could not give the service?

A. I imagine they are numerous. I do not have them before me just now.

Q. Do you know of any such points?

A. I believe I answered that.

Q. Well, will you answer it again?

A. Yes.

Q. Because I did not get the answer.

A. I do not have them before me just now.

Q. Then, do you know, of your own knowledge, of no such points?

A. Well, there are points down in the deep south that are reached by the M. & A. I have already testified to that.

Q. Let me put it this way: You are not able at this moment, without some other means of refreshing your recollection, to name any such point to us; is that it?

A. Not to any extent.

Q. Can you name one point?

A. Yes. Well, I can name one or two perhaps, down in the deep south. Say Pascagoula, Alabama, for instance.

Q. You say Transportation is the only carrier that goes to Pascagoula?

A. No; I didn't say.

Mr. MILLER. Will you clarify that by saying from where?

By Mr. SULLIVAN:

Q. From the territory where Mason & Dixon Line has service.

A. As far as we know, they are.

Q. Do any of the connecting lines other than Transportation get close to Pascagoula?

A. I couldn't answer that, sir.

Q. Pascagoula is also served by water transportation, is it not, very extensively, as well as by truck line?

A. I have understood it is.

Q. Do you know of any points in the north where a similar situation would prevail?

A. Let me see if I get your question correctly. That is where there would not be another originating or delivering carrier?

Q. That is right.

1339 A. Serving the point?

Q. That is right.

A. There are several points in the east served by Consolidated Motor Lines. I am not saying they are the only motor carriers serving those points, but they are the only ones, to my knowledge, that serve them with through rates.

Q. No. You see, I ask you, please, to eliminate rates. Then, I take it, eliminating rates, your answer would be that, except for Pascagoula and some points in the deep south, there would be no such points; is that it?

A. No; I didn't say that.

Q. Well, let us move along. Now, on this question of through rates, do I understand that you are fearful that if this application were approved, some service offered by one or more of the carriers involved in this application, which you make use of through Mason & Dixon Lines, would be cut off to you, because they might withdraw their through rates?

A. That is a possibility, but that is not my big worry.

Q. What is your big worry?

A. My big worry with respect to that is the loss of traffic we are now hauling.

Q. All right. You are referring to Consolidated?

A. Or any others in the consolidation.

Q. All right.

A. Where we have ever hauled traffic.

1340 Q. Do you feel, sir, that you have some vested right in the traffic that you presently haul?

A. Yes; indeed.

Q. You feel, then, that a carrier who enjoys certain truck traffic acquires a vested right in that, and that no action of the Commission in approving an acquisition or a merger should be permitted if it should deprive the carrier presently having the business, of that business, or if it might deprive it of it. I will say? Is that what I am to understand?

A. I don't understand you.

Q. I will try it again. You have told me that you feel that the Mason & Dixon Lines have a vested right in the business which they are presently enjoying by way of connection, I presume, business originating over the lines of one or more of the carriers involved in this application, and I asked you then if I am to understand from that that you feel that the Commission should not approve a merger or an acquisition of one line by another line

in a case where it might result in some increase of competition to a line in a particular territory so that ultimately it might lose some business? Is that what I am to understand?

The WITNESS. Mr. Examiner, I am not trying to pass the buck by answering your question, but I would like to have it explained to me, just what is meant by "vested right."

1341 By Mr. SULLIVAN:

Q. Well, I don't know. You answered it rather rapidly, and I thought, therefore you knew what I meant. I apologize.

A. I do not.

Q. All right.

Exam. BAKER. I do not see any advantage in pursuing that.

Mr. SULLIVAN. All right. I will pass from that.

By Mr. SULLIVAN:

Q. The Mason & Dixon Lines have extended their routes during the past year or so, have they not, through acquisition of other carriers?

A. Yes.

Q. And to quite a degree they have extended them, particularly in the south?

A. To quite degree?

Q. In point of mileage, they have extended them quite a bit.

A. I don't think it is such a terrible extension.

Q. Let us see. From where to where did you extend your lines in the last year or so?

A. Are you asking me?

Q. Yes.

A. Well, in the past year or so, through the acquisition or the purchase of certificates issued by the Commission to carriers, we extended our operation as far as Charlotte.

Q. From where?

1342 A. From Asheville, North Carolina.

Q. You made other extensions as well, did you not?

A. Yes.

Q. Well, let us take this one. That, we might say, is Mr. Horton's back yard, is it not, practically?

A. I don't know. I have not been in Mr. Horton's back yard.

Q. I mean, Mr. Horton's home office in Charlotte.

A. Yes.

Q. And were you able, after this acquisition and extension of your routes, to increase the business that was formerly done by the company that you acquired there?

A. Will you put that question again?

Q. All right. You acquired a carrier, permitting you to extend your lines from Asheville, you said, to Charlotte; is that right?

A. That is right.

Q. And this carrier that you acquired operated how many pieces of equipment at the time you acquired it?

A. I don't recall.

Q. Well; was it more than ten?

A. I don't know.

Q. Have you increased your business in that territory over what it had been?

A. I would say we have not. The only thing we did with that business was to give a little better service on traffic that  
1343 we had already been handling into that territory.

Q. And he had been a connecting line previously, had he?

A. Very small. We had other connecting lines, though.

Q. So after you got this line from Asheville to Charlotte, what happened to your other connecting lines that you used to use?

A. Practically nothing.

Q. You are still exchanging with them?

A. Oh, yes.

Q. To the same extent as before?

A. Possibly not to the same extent.

Q. But you did not cut them out?

A. No, sir; because the carrier that we purchased is still operating, and we are simply going on with what he did.

Q. So that, under those circumstances, those carriers with which you formerly connected did not suffer any by your acquiring a carrier from Asheville to Charlotte; did they?

A. Only for the reason that the carriers that we acquired, we simply took up where they left off at the time we acquired them; that is all.

Q. But the other carriers that connected with you, serving that territory, did not suffer because you acquired that carrier and extended your lines into that territory?

A. I have not heard any complaints from them.

Q. You have other acquisitions presently pending, have you not?

1343-A A. Yes.

Q. And under which you propose to extend your lines to other parts of the south?

A. Yes.

Q. So that you will cover some of the territory covered presently by various concerns in this proposed merger; is that right?

A. Well, may I answer that just as it is?

Q. I hope you will. I have been kind of going on the assumption that that is what you have been doing all afternoon.

A. As far as we know, there is not any carrier operating out of New York City to Nashville, Tennessee, who is operating lawfully. Now, I am only expressing an opinion.

Q. Do you operate there?

Exam. BAKER. Mr. Dempsey, will you confine your answers to questions of counsel?

The WITNESS. I am trying to do that, your Honor.

Exam. BAKER. I do not believe that your reply is responsible to the question.

The WITNESS. Well, I certainly apologize, if he will restate his question.

Mr. SULLIVAN. I will have it read, instead of restating it.

Exam. BAKER. I am referring to the question just ahead of this one.

1343-B (Question read.)

Mr. SULLIVAN. I guess I had better restate it.

By Mr. SULLIVAN:

Q. If you are permitted by the Commission to make these acquisitions which are presently pending, you will be extending your lines into the territory of certain of the carriers in this merger—territory which you do not now serve directly, but which they serve directly?

The WITNESS. I am afraid the Examiner did not get the drift of my answer in trying to answer that question for you in the beginning.

Exam. BAKER. I believe you can answer that yes or no, Mr. Dempsey, and then, if you want to explain your answer, you may proceed to do so.

The WITNESS. Well, read the question, please.

(Question read.)

A. My answer is absolutely no.

By Mr. SULLIVAN:

Q. Well, does this acquisition, or do these acquisitions that you have pending, extend your lines, if they are granted?

Mr. SULLIVAN. Are we waiting for an answer again, Mr. Examiner?

Exam. BAKER. I do not know whether he took that to be a question or not.

The WITNESS. I said "no" as loud as I knew how.

Mr. SULLIVAN. I asked a question after that.

1343-C Mr. MILLER. Please read that last question. I believe it answers itself.

(Question read.)

A. I answer that absolutely no, with special respect to the extension into Nashville, Tennessee, if that is what you have reference to.

Exam. BAKER. Now, Mr. Dempsey, I believe you misunderstood the last question, and I do not want you to answer it under any misunderstanding.

Mr. MILLER. Maybe I did not understand it, but if he will make his question more clear, it will be helpful. Is it really material to this proceeding, Mr. Examiner?

Mr. SULLIVAN. If I could just get one answer to one of these questions, so that I can move along, I would tell you right now how it is material.

Mr. MILLER. We will stipulate that the Mason & Dixon Line does not operate at the present time to Nashville, Tennessee, but has an acquisition pending before this Commission, which is also being protested by a member of the combine.

Exam. BAKER. The question is, if the proposed acquisitions involved in the application by the Mason & Dixon Lines now pending before the Commission is granted, would that extend its lines in any respect?

The WITNESS. The question was if it would not extend our operation to make it competitive with a member of the 1343-D proposed consolidation.

Exam. BAKER. That was the previous question, Mr. Dempsey. What is what I thought you misunderstood. That was the previous question. There was a question after that, asking you whether or not you would extend your lines in any respect, as I understood the question. Now, what is your answer to that?

The WITNESS. I was simply answering on the basis of the pending application that we have. Now, if the gentleman wanted to extend it to any possible future acquisition, I could only answer on each one of them.

Exam. BAKER. Can you make your question more specific as to the acquisition you have in mind, Mr. Sullivan?

By Mr. SULLIVAN:

Q. What application have you presently before the Commission for the acquisition of a line?

A. Cumberland Freight Lines, from Knoxville to Nashville, Tennessee.

Q. Is that the only one you have pending?

1344 A. That is the only acquisition—that is the only acquisition we have pending right now.

Q. All right. You do not operate into Nashville at the present time?

A. Only through connections.

Q. What company in this proposed application presently operates into Nashville?

A. Southeastern Motor Lines are running in there.

Q. You have other acquisitions in mind, haven't you, without naming them?

Exam. BAKER. I do not believe he need answer that question.

Mr. SULLIVAN. All right.

By Mr. SULLIVAN:

Q. You have extended your lines into Lynchburg, Charlotte by way of Greensboro; you have extended your through traffic to Bristol and several other places, in the past few years, by which you substantially duplicate the lines of Horton and Barnwell; have you not?

A. The extensions you mentioned to Lynchburg—I ask you if you have in mind into the Carolinas. May I ask you that question?

Q. If those extensions are in the Carolinas, I have the Carolinas in mind. Now, go ahead.

A. Then, I will answer you. We bought and paid for anything the Commission did not grant us as irregular territory 1345 under our grandfather clause application. Neither have we asked for anything on that particular road or highway, other than what we already had.

Q. What did you buy them for?

A. Just as a regular route. We had it already on irregular.

Q. You claim you had a right to go to Charlotte and handle freight prior to these extensions?

The WITNESS. Mr. Examiner, may I ask my attorney over there whether this is the application here or our application or what?

Exam. BAKER. Mr. Sullivan, I do not think we should go into that in great detail.

Mr. SULLIVAN. In view of the progress I seem to be making, I will drop the subject.

By Mr. SULLIVAN:

Q. You feel that whatever extensions you have made in your lines in the last year or two are in the public interest; do you?

A. Absolutely.

Q. You feel that had no adverse effect on connecting carriers that formerly assisted you in rendering service—

A. Some of the—

Q. Wait until I finish.

A. Yes; indeed. Pardon me, please.

Mr. SULLIVAN. Will you read me that part of my question?

(Question read.)

1346

By Mr. SULLIVAN:

Q. (Continuing.) To the territory to which you extended your lines?

A. I might say that I have had some of our connecting carriers with whom we have always done business, operating into that territory, tell me that they appreciated the fact that we are in there. Now, just why, I hesitate to answer that. I don't know.

Q. But is it your answer that you feel that it has had no adverse effect on those connecting carriers?

A. There has been in some instances; yes.

Q. Serious?

A. I don't know how serious it is.

Q. Do you feel, looking back on it now, that the Commission should not have given you that extension because of the adverse effect on those carriers?

A. Why, certainly, the Commission did exactly right.

Q. All right. Now, one other thing, and then we will stop. You say that you find the transfer you have with Transportation Lines, the interchange you have with Transportation Lines, Inc., of particular value to your company; do you?

A. Yes, sir.

Q. Now, what did you mean by the other part of the testimony that you gave, in which you said that they found out about the freight you had and went ahead and solicited; they found out about the freight because of your interchange with them.  
1347 and went ahead and solicited and took the business away from you?

A. That is right.

Q. But you continued to ship over the lines of Transportation, although that tipped them off as to the freight you had, and then they got the business away from you?

A. That is right.

Q. So, whatever they are doing now, they could not do any more if this application were approved?

A. Only cut off that tremendous tonnage we have been enjoying in interchange.

Q. Your company has grown pretty consistently during the past 10 or 11 years of its existence, has it not?

A. It has done fairly well.

Q. Do you think it has grown in the last three or four years substantially, that its tonnage has grown substantially in proportion to the growth of either Horton or Barnwell tonnage?

A. I don't know just what their tonnage is; but may I say that the growth of the Mason & Dixon Lines is because of our efforts in serving our patrons, especially over the routes that we have operated.

Q. You feel that the service is superior to the service rendered by either Horton or Barnwell?

A. I think it is superior to any service in the United States.

1348 Q. So that merely putting Horton and Barnwell together is not going to improve their service to the point where they can reach the service you offer?

A. I couldn't answer that. I do not know.

Q. Well, assuming that it did result in an improvement over your service, would you say that the public should be deprived of that service, if it were to mean depriving you of any of the business you presently enjoy, through interchange or otherwise?

A. As far as I know, they have just as good a service as we have.

Q. Who has? Who has just as good a service as you have?

A. Barnwell, Horton, and all those that you just mentioned.

Q. What did you mean by saying that your service was superior, then?

A. I simply told you I thought we had the best.

Q. All right.

A. I am talking now like I am trying to get a little bit of freight.

Q. And you are not afraid that you won't be able to get the freight, either, in the future; are you?

A. A whole lot of it we won't.

Q. Don't you get the freight on the basis of service?

A. Yes, sir.

1349 Q. You have been able to put your service in a position where it was competitive with Horton and Barnwell?

A. We are trying every day to keep it and hold it, but we are still having a hard time.

Q. But you have increased your freight volume from year to year?

A. Well, national defense has moved up freight for everybody.

Q. But even before national defense, was your freight increasing?

A. Well, to some extent.

Q. Can you name any two years in which your freight remained constant?

A. No, sir; I could not name any particular year.

Q. It has been upward every year since 1935?

A. Been operating every year?

Q. Your gross volume of freight has gone upward every year since 1935—increased every year since 1935?

A. Yes.

Q. Have you been at all concerned in the past, in the past few months or year, that Transportation Lines might go out of business for financial reasons?

A. No, sir.

Q. Did you ever look up one of their balance sheets?

A. No; I have not had time to look at their balance sheet.

Q. Does not your company ever investigate the financial condition of its connecting lines?

1350 A. Yes, sir.

Q. Did you investigate the financial condition of Transportation, Inc., at any time within the last year or year and a half?

A. I could not answer that definitely. I may say that we keep tab on all of our connecting carriers and try to keep our interchange collected up.

Q. You presently have connections which enable you to render service over the state of Pennsylvania; have you not?

A. Who?

Q. Connections which enable you to render service throughout the state of Pennsylvania?

A. Well, yes; there are connections up there.

Q. You yourselves, operate in the state of Pennsylvania, do you not?

A. Yes.

Q. Do you operate in New York State yourselves?

A. Only in the New York district.

Q. Do you go to Binghamton?

A. Irregular.

Q. Have you increased your service to the city of Binghamton in the last year or two?

A. No; I can not say we have. I do not have any figures on what tonnage we have in and out of Binghamton.

Q. But you do operate and claim operating rights to 1351 Binghamton; do you not?

A. Yes; we can go there lawfully, for the time being.

Q. Are there any other points that you claim in New York State you have a right to go to?

A. There are several points.

Q. Do you claim to have a right to go into a large part of New York State?

A. No.

Q. You have many connections in upstate New York, have you not?

A. No, sir; very few.

Q. Well, you have adequate connections, covering substantial points?

A. No, sir.

Q. I beg your pardon?

A. No, sir; I don't think we have.

Q. Could you name any of your connections for upstate New York?

A. Consolidated Motor Lines is about the biggest one I know of.

Q. Do you know any of the others?

A. I can not recall their names right offhand. I think Moran runs up there, too.

Q. One more question, sir, and then I am finished.

1352 Is it not a fact that the reason the interchange tonnage between your company and Consolidated was reduced, starting about last May, a year ago this May, was because beginning at that time and continuing on for the next few months Consolidated changed their rates, so that they could not accept a rate less than either second or third class, unless it paid the second-class rate—either the second- or third-class rate?

A. Are you asking me to analyze the tariff situation now with respect to the inflated extensions that the Consolidated Motor Lines have?

Mr. SULLIVAN. May their soul rest in peace, Amen. All right. That is all.

Exam. BAKER. Come to order, please. Is there any further cross-examination?

Mr. MACDONALD. Mr. Examiner, may I, in the interest of clarifying the record, ask a further question before redirect?

Exam. BAKER. Very well.

By Mr. MACDONALD:

Q. You were asked to compare the services of Mason & Dixon Lines and all its exchange carriers with that of the proposed service of Associated Transport, Inc. Do these 225 exchange carriers include the carriers concerned in this application?

A. They include some of them. There are some of them, but there are certain tariff restrictions, like, for instance, in the case of Moran, and possibly some of the others. Now,

1353 I do know that we have no through rates with Horton at all. They have absolutely refused to interchange their freight with us anywhere. I remember in one particular locality we were having difficulty in locating a connection that they serve, and I was unable to get them to go along with us in joining in through rates. Now, there may be others; I don't know right offhand. As to Barnwell, I think his tariffs are restricted, that the rates do not apply in connection with the Mason & Dixon Lines. Horton and Barnwell will be found in the tariffs as being restricted to certain carriers throughout the entire territory.

Q. So far as the comparison goes you were asked to make, it was a comparison, then, between Mason & Dixon and all of these

exchange carriers, including Consolidated and Transportation, Inc., as compared with the eight carriers, which also include Consolidated and Transportation, Inc.?

A. That is true. I am only speaking of those in the consolidation, but I speak especially of Consolidated and Moran, and to some extent Transportation.

Mr. MACDONALD. Those are the things that I wanted to get straight, Mr. Examiner.

Mr. SULLIVAN. Before we leave that, may I ask one question, please, Mr. Examiner, lest there be any confusion there.

By Mr. SULLIVAN:

1354 Q. There is only one point involved in your joint through rate with Moran, is there not, and that is Norwich, New York?

A. I don't recall the point.

Q. You would not say that there were any more?

A. I would not say that there were any more.

Mr. MACDONALD. I have one thing further on that.

By Mr. MACDONALD:

Q. In that comparison you included all your exchange carriers. Were you asked to include in the comparison with Associated Transport, Inc., exchange carriers? Do you understand my question?

A. Yes; I think I do. If I get the question right, they are in a position now and will be from here on to interchange freight with any carrier they may see fit. They are in a position to restrict, of course; under the Act they do not have to exchange freight here or there with any carrier they do not see fit to.

Q. I am afraid I did not make myself quite clear. If you are comparing the services rendered by Mason & Dixon, in conjunction with all of its exchange carriers, as the total area, compared to the services rendered by Associated Transport, Inc., as proposed, with all of its exchange carriers, would the territories be equivalent?

A. Well, the territories would be about the same, but I would say that if this consolidation comes about, naturally and no  
1355 doubt it would be in a more desirable position than any other small carrier operating as he is today.

Q. Is it not a fact that if you include the exchange carriers, with the area which any medium or large sized carrier may have, they now serve practically all of the area here concerned?

A. Well, he would take in, I will say, more than 50 percent of the territory throughout the eastern seaboard.

Mr. MACDONALD. That is all.

The WITNESS. That is now served by any other carrier.

Mr. MACDONALD. That is all.

The WITNESS. When I mention that—pardon me—it takes in the far southwest, down the river to New Orleans.

Exam. BAKER. Is there any further cross-examination?

Mr. MILLER. I have a few more questions.

Redirect examination by Mr. MILLER:

Q. Mr. Dempsey, in selecting a connecting carrier, what factors does Mason & Dixon take into consideration?

A. We have never used any particular formula for selecting interchange carriers. Our rates are wide open. We participate in through rates without any exceptions at all throughout this vast territory involved in this case.

Q. Does Mason & Dixon consider the financial responsibility of a connecting carrier?

A. We always have to watch the financial responsibility  
1356 of every carrier.

Q. Does it consider the services that carrier can render?

A. Service is one of the main things that are scrutinized closely.

Q. Do you investigate as to whether or not the carrier maintains a terminal in the town of your interchange point?

A. Oh, yes. That is necessary, of course.

Q. Has it been your experience that a small, one-vehicle carrier, say, or up to a five-vehicle carrier, can render a very attractive service over an extensive territory?

A. Well, I would not say that it could, over an extensive territory.

Q. Now, in connection with the extension of the Mason & Dixon Lines into Mr. Horton's "back yard," do you recall whether or not Mr. Horton made any opposition?

A. Do you mean in the acquisition of those lines?

Exam. BAKER. I do not feel that that is material, Mr. Miller.

Mr. SULLIVAN. The net result was that it did not do him any good, if he did so.

By Mr. MILLER:

Q. Does Transportation, Inc., operate into New England territory or into New York State?

A. No; they do not.

Q. But they do operate into Tennessee?

A. Yes.

1357 Q. And they serve points there that the Mason & Dixon Lines serve; is that correct?

A. They are one of our largest competitors in the state of Tennessee, from there on down to Atlanta, Georgia.

Q. Would you say that the freight which you are turning over now to Transportation, Inc., is mostly freight originating at points which Transportation does not serve?

A. The interchange of freight?

Q. Yes.

A. Oh, yes.

Q. The Mason & Dixon Lines employ a few solicitors, do they not?

A. Yes; they do.

Q. Is the solicitation staff under your supervision?

A. Yes.

Q. And has it been your purpose, as far as possible, to increase the amount of freight handled by the Mason & Dixon Lines?

A. Oh, yes; every day.

Q. And in the past you have been successful, would you say?

A. Well, fairly.

Mr. MILLER. That is all.

Mr. SULLIVAN. Just one question.

1358

Re-cross-examination by Mr. SULLIVAN:

Q. When you say "well, fairly," do you say that because of your natural modesty, or have you only been fairly successful?

A. Well, being of a modest nature, I would have to admit that we have just been fairly successful.

Q. Do you mean that is because you are ambitious to do greater things, and you regard whatever progress you have made just as a sort of stepping stone?

A. Were it not for our ambitions, God help us!

Exam. BAKER. Come to order.

Mr. SULLIVAN. That is all.

Exam. BAKER. The annual reports will reflect the gross operating revenues of the Mason & Dixon Lines.

Mr. JOSELOFF. Mr. Examiner, May I ask just for clarification of one or two prior questions—

Mr. MILLER. Mr. Examiner, I submit that Mr. Sullivan here has done his utmost to exhaust the witness.

Mr. JOSELOFF. Well, I agree that to have more than one counsel, either way, might be unfair.

Exam. BAKER. In view of the objection, applicants should confine their questions to those asked by one counsel.

Mr. JOSELOFF. Very well. I will ask Mr. Sullivan, then, if he will ask the question [conferring with Mr. Sullivan].

Mr. SULLIVAN. I do not think we need to.

1359

Exam. BAKER. Mr. Dempsey, I requested that you furnish some data with respect to the total tonnage handled during

the seven-month period January 1 to July 31, 1941, by Mason & Dixon Lines, Inc. Will you also include the tonnage interchanged at Atlanta and New York City with carriers other than the carriers involved in this unification. By that, I do not mean to give us the tonnage for each carrier, but the average tonnage interchanged with all other carriers involved in this unification.

The WITNESS. I will be glad to do it, sir.

Exam. BAKER. You mentioned, I believe, that you interchange with Consolidated and Transportation, Inc. Are they the only two of the eight carriers here involved with which you interchange?

The WITNESS. No, sir; there are not the only ones, Mr. Examiner.

Exam. BAKER. What other carriers do you interchange with? I believe it has been testified you interchange with Moran on certain commodities.

The WITNESS. Arrow Carrier.

Exam. BAKER. Is that substantial?

The WITNESS. I wonder if I could have the names read off, and I can answer it that way.

Exam. BAKER. Yes. Off the record for a moment.

(Discussion off the record.)

1360 Exam. BAKER. Back on the record.

The WITNESS. Consolidated, Transportation, Arrow Carrier, to some extent with Moran, and to some extent with South-eastern.

Exam. BAKER. You mentioned, I believe, that you had received, during the period indicated, from Consolidated Motor Lines something in excess of 1,000,000 pounds of freight. Could that freight have been carried to destination by any one of the carriers involved in this proposed unification?

The WITNESS. You speak of the 1,151,910 pounds?

Exam. BAKER. That is correct?

The WITNESS. Yes; a large percentage of it could have been on interchange at Atlanta. Most of that is competitive with those involved in the consolidation.

Exam. BAKER. Perhaps I have the wrong figure. What was the amount of freight that you received from Consolidated at New York through interchange?

The WITNESS. Received from Consolidated in New York for that period, 1,274,126 pounds.

Exam. BAKER. That is the particular traffic I had reference to. Now, with respect to that traffic, Consolidated could have delivered that traffic to any of the others here involved, could it, for delivery to the consignee instead of to the Mason & Dixon Lines?

The WITNESS. I venture to say that every pound of it could have moved by some other carrier.

1361 Exam. BAKER. In view of your remarks with respect to the attitude of Consolidated with respect to the Mason & Dixon Lines, can you explain why they delivered this large amount of traffic to your company?

The WITNESS. What I was driving at was this: We work hard to secure routing orders, and we secure these routing orders in connection with our lines, of course, as the delivering carrier.

Exam. BAKER. Well, was it because the shipper specified the routing over your line?

The WITNESS. That is what we worked towards. I wouldn't say that every pound of this was like that, but we do try to get all this business routed that we possibly can.

Exam. BAKER. Would you state that, on the majority, at least, of that traffic, the routing was specified by the shipper over your line?

The WITNESS. I feel that way about it. I would not like to make that as a definite statement until I have had an opportunity to analyze each and every one of these bills.

Exam. BAKER. Well, do you feel that the shippers whose patronage you presently enjoy through interchange with Consolidated would be likely to change the routing of their shipments in the future from Mason & Dixon Lines?

The WITNESS. It may not be the attitude so much of the shipper in that respect, Mr. Examiner, but it would be the  
1362 attitude of the connecting carrier. It stands to reason that any company is going to haul the freight all of the way it can.

Exam. BAKER. Perhaps I can shorten this, Mr. Dempsey. What I have in mind and am referring to now is the traffic in excess of 1,000,000 pounds you have received from Consolidated. I believe you stated that it is Consolidated's inclination to favor the other carriers involved in this unification. If that is the case, of course, there would be no change in the situation in that respect after the unification; so what I wanted to ascertain is whether you feel that after the unification you are going to lose all of that 1,000,000 pounds of freight for a comparable period, which you received during the seven-month period indicated?

The WITNESS. Yes, sir; we do feel that we will lose the majority of it.

Exam. BAKER. Do you feel that you would lose it by reason of the fact that the originating carrier would not follow the shippers' directions, or do you feel that the shippers would specify other routing?

The WITNESS. Some of both, but on the majority of it, the inclination would be that they would disregard the routings. May I go on and add—

Exam. BAKER. No; not on that subject.

The WITNESS. It is in answer to the same question, if  
1363 you will permit me, please.

Exam. BAKER. Very well.

The WITNESS. That wherever a carrier—and the Mason & Dixon Lines is no exception—can get a line on a piece of traffic, then they go in and do their very best to get the routing changed.

Exam. BAKER. Have you interchanged at New York with any other carrier serving the New England territory?

The WITNESS. Yes.

Exam. BAKER. In connection with the shippers' routing of all of this merchandise by way of Mason & Dixon Lines, how does it come about that the shipper specifies your company? Is it because your solicitor has approached those companies for the business?

The WITNESS. It is because of our activity with receivers of this freight in the south, that we get them to route, to write them and ask them to route by Mason & Dixon—care of Mason & Dixon Lines.

Exam. BAKER. Well, can not your solicitor ask that this business be routed by some company other than Consolidated and Mason & Dixon Lines?

The WITNESS. In some cases; yes.

Exam. BAKER. In the majority of cases?

The WITNESS. But not in all, by any means.

Exam. BAKER. Would you say in the majority of cases?  
1364 The WITNESS. No; I would not say in the majority of cases could that be accomplished.

Exam. BAKER. Well, why could it not?

The WITNESS. Because of the vast coverage of Consolidated Motor Lines.

Exam. BAKER. So far as the principal points in New England are concerned, it would be possible to make connections with another carrier; would it not?

The WITNESS. Well, some of them. I was just trying to think which ones could not be. I can not think of any principal points in New England that are not touched by Consolidated.

Exam. BAKER. Can you think of any principal points in New England that are not touched by some carrier other than Consolidated and McCarthy?

The WITNESS. No; I can not think of any in New England.

Exam. BAKER. With respect to your statement that you would

be at the mercy of Associated Transport with respect to the division of revenues, could you not enter into other routings and joint rate arrangements with other carriers with which you could make appropriate agreements with respect to a fair division of the revenue?

**THE WITNESS.** To the extent of the territory they serve and the traffic that we interchange with them. That is done today.

**EXAM. BAKER.** Assuming that there were other carriers 1365 serving the points involved, you could make arrangements with those carriers, could you not?

**A.** Yes; but the point is that with a combination such as this, and controlling the traffic that they do or possibly would, the division angle of it would come in more severely.

**EXAM. BAKER.** Do you feel that there would be any likelihood in case this unification were approved and consummated of carriers so operating in New England into New York City, which presently might be delivering interchange traffic to Horton or Barnwell, after consummation of the transaction, changing their interchange carrier to some carrier outside of the unification? Perhaps my question is not clear.

**THE WITNESS.** I think it is, sir. That is in existence today.

**EXAM. BAKER.** What I had in mind is: Do you feel that Horton and Barnwell might lose some of the business that they are presently receiving through interchange at New York and transporting it into the south?

**THE WITNESS.** They might lose some, but right today—and that is the point I was making—they do not interchange with Keeshin, for instance, and Seaboard Freight Lines, at New York. Their tariffs are restricted.

**EXAM. BAKER.** In case a New England carrier were presently interchanging with Horton, and this proposed unification were approved, in view of the fact that Associated Transport 1366 would be in competition with that New England carrier, would it not be likely that that carrier would tend to deliver any goods under his control to a carrier other than Associated Transport?

**THE WITNESS.** That is true, if he could get a better division deal.

**EXAM. BAKER.** Everything else being equal, he would be inclined to deliver it to some other carrier, would he not, that was not a competitor of his?

**THE WITNESS.** That was not a competitor, sure; no doubt he would.

**EXAM. BAKER.** In other words—

**THE WITNESS.** He would be in that same position with any of the rest of us from those points that are competitive with him.

**Exam. BAKER.** In other words, while Mason & Dixon Lines might lose some traffic that they are presently enjoying, through the consummation of this unification, is it not likely that they would also obtain some traffic that they have not been enjoying?

**The WITNESS.** I do not think so, and that is why I mentioned the fact that the tariffs are restricted at the present time. The Seaboard Freight Lines, part of Keeshin, is one of the largest operators in the New England territory, and I know right off-

1367 hand that their rates are restricted insofar as Barnwell and Horton go. Now, there may be others operating in and out of that territory. Adley—his freights are restricted in favor of Horton, I believe it is, but that is only one carrier. Now, there may be others that I could look up and give you the complete low-down on as to restrictions in the tariff.

**Exam. BAKER.** Let us take Adley. As I understand it, the testimony shows that Horton does presently interchange considerable freight with Adley, and that Adley operates over a substantially wide area in the New England territory, and if this unification were approved, then Horton and Consolidated would, of course, be under common control. Would there not be a tendency on the part of Adley to find another connecting carrier than Horton or Associated Transport?

**The WITNESS.** I doubt it seriously, Mr. Examiner, because of my past experience with Adley in my efforts to get them to go along and play with us in through rates. They never have done so up to now.

**Exam. BAKER.** You mentioned, I believe—

**The WITNESS.** And I can see no reason why he should change his attitude.

**Exam. BAKER.** I believe you mentioned that there were certain disadvantages in turning over traffic to competition; that is, if Adley turned over his traffic to Associated Transport at New York, for transportation further south, then, naturally, Associated

1368 Transport would learn of details with respect to his customers and would be in a position to solicit those customers in the New England area at the points of origin. Would not that incline Adley to stop turning over traffic to Associated Transport, Inc.?

**The WITNESS.** It may. I am not familiar at the moment with just the points of the territory served by Adley, as compared with that served by Consolidated and McCarthy.

**Exam. BAKER.** Of course, I am only considering the territory where Adley operates.

**The WITNESS.** Yes. It may be that he will change his attitude. I can only speak from what I know has transpired in the past.

**Exam. BAKER.** Can you state, in dollars and cents, the likely effect which the consummation of this transaction would have upon **Mason & Dixon Lines?**

**The WITNESS.** No, Mr. Examiner; I am not able to state it in dollars and cents. Of course, as to the loss, as we see it, of actual traffic and the control of traffic for the future because of a consolidation of this kind is really quite serious with us, but that is really not the only fundamental part that we are looking at.

**Exam. BAKER.** Well, you have stated, I believe, that it will have an adverse effect upon you. What I would like to ascertain is the extent of the adverse effect which it would have. Would it  
1369 cause you to go into bankruptcy; would it cause you to reduce your service, or would it cause you to increase rates, or just how would it affect you?

**The WITNESS.** More than likely—and that is exactly what we are afraid of—it would affect us to the point that anyone controlling—I am forgetting the amount of tonnage, but the buying power of an organization the size of this kind would be such that we would be at a very serious disadvantage out in the open market in buying supplies, as compared with their buying power and capacity. That is one thing. Let us take the insurance angle. That is a very expensive proposition for all motor carriers. They will be in a position—perhaps, maybe, even now some of them are—but they would be in a position to do their own underwriting, and that might possibly have some bearing on the effect upon our operations.

Then, coming right along down the line, to the selling of preferred stock to the public. The only thing that I can see insofar as the public is concerned—and it may be lawful and matter of law, of course—that is something that is left entirely to the Commission to decide, and we have confidence that they will do it, and whenever they begin to sell stock to the public, it may be the shipping clerk or who, and naturally through that devious means they are going to even control more traffic than they are through the mere consolidation that we have been talking about.

**Mr. SULLIVAN.** Am I going to be permitted to cross-  
1370 examine on this sort of performance that he is giving now?

**Exam. BAKER.** Does that complete your statement?

**The WITNESS.** No, sir; I did have something else to say in answer to that question.

**Exam. BAKER.** The answer is not directly responsive to the question. My question is the extent to which this would adversely affect your company, not to go into details as to all the disadvantages, but have you any estimate as to how much it is going to affect your company? That is what I was trying to get at.

The WITNESS. Your Honor, that is the way I endeavored to answer your question, by making the statement that I have.

Exam. BAKER. Well, you may proceed. Perhaps that answer will bring it forth.

The WITNESS. These are some of the things that these at least 22 motor carriers, that we have intervened in behalf of, have in the back of their heads.

When they speak of passing economies on, there are none of us that want to fight unity. We believe in that, but not to the extent of smothering small businesses, and we see in this the possibility leading on to passing out the economies that might be derived from this, a question that we are not going to admit that they can do, because none of us knows, but if the economies are arrived at, to whom are they going to pass them along, if it is to be done in the public interest?

1371 Exam. BAKER. As I follow your statement, it is really argument, Mr. Dempsey. I want the facts.

The WITNESS. Well, I was just trying to answer your question as to what was in the back of the minds of those carriers that we are representing, and in answer to your question as to how it was going to affect us financially.

Exam. BAKER. I think your answer—

The WITNESS. What I am saying may be a long way around it, but—

Exam. BAKER. It seems to me a little far afield.

The WITNESS. But there would be only one way to pass on economies, and that would be through reduced rates, and the only way they can reduce their rates would be through their position, to go out and underbuy and finally smother the small operator. That is all.

Exam. BAKER. This witness is excused.  
(Witness excused.)

Exam. BAKER. We will adjourn until 9:30 tomorrow morning.  
(Whereupon, at 6:15 o'clock p. m., the hearing was adjourned to September 9, 1941, at 9:30 o'clock a. m.)

1372 Before the Interstate Commerce Commission

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES  
HEARING ROOM "B,"

I. C. C. BUILDING.

Washington, D. C., Tuesday, September 9, 1941.

Met, pursuant to adjournment, at 9:30 a. m., before: Vernon V. Baker, Examiner.

Appearances: (The same as heretofore noted.)

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## PROCEEDINGS

Exam. BAKER. Come to order, please. You may call your next witness.

C. H. SMITH, being first duly sworn, testified as follows:

Direct examination by Mr. MILLER:

Q. Will you please state your name and address?

A. C. H. Smith, president of Smith Transfer Corporation, Lenoir, North Carolina.

Q. How long has your company been engaged in business?

A. Since 1919.

Q. What are your duties with reference to your present occupation?

A. General manager.

Q. Where does your company operate?

A. We operate from Charlotte, North Carolina, throughout the State; from Hickory, Asheville, Murphy, and Chattanooga; and also from Asheville to Marshall, Hot Springs, Knoxville, Tennessee, and also to Boone, North Carolina.

Q. Is your company a common carrier of general commodities?

A. Yes, sir.

Q. Are you generally familiar with what is involved in this proceeding?

A. I think so.

1375 Q. Do you at the present time interchange with any carriers involved in this unification?

A. Yes, sir; Horton, Barnwell, Transportation, and Southeastern.

Q. At what point do you interchange with Horton?

A. Hickory, and also Charlotte.

Q. Do you interchange a substantial amount of tonnage?

A. Yes; we do. More at Hickory than we do at Charlotte. We have a tractor that is a little larger than we generally use, on account of the weight restrictions in Tennessee, and we pull Horton's trailers from Hickory to Asheville.

Q. Do you interchange with Horton Motor Lines?

A. He furnishes the trailers; we furnish the tractors.

Q. How do you believe that this proposed unification will affect that arrangement?

A. Well, I feel that there is Barnwell and Transportation, and also Atlantic States—they are not in here.

Q. No; they are not.

A. Horton, Barnwell, and Transportation make Asheville. Transportation also makes Knoxville, Tennessee. And I feel that if it goes through we will be eliminated from interchange on Asheville freight and also from connecting lines in Knoxville, Tennessee. I feel that Transportation and Southeastern Lines will have a wider territory to offer connecting lines, one-line haul, further than we can, which will probably affect us.

Q. At what point do you interchange with Southeastern?  
1376 A. Boone, North Carolina.

Q. And, generally, where does that traffic that Southeastern turns over to you originate?

A. Well, some of it originates in Knoxville, Tennessee; some of it in the east, some out of Winston-Salem.

Q. Do you know whether or not Horton Motor Lines also serves those points in the east served by Southeastern generally?

A. Yes.

Q. Do you believe that that interchange arrangement will continue in the event this unification is consummated?

A. I do not believe it will. Of course, I have got no way of knowing that it would not.

Q. Do you find that as a matter of policy that a carrier will avoid interchange where it is possible to transport the freight direct?

A. Yes, sir.

Q. As a matter of policy do you find that carriers interchange with their competitors?

A. No; not unless they are forced to.

Q. Why is it, in your opinion, that carriers do not like to interchange with their competitors?

A. Well, it gives them a lead on the freight.

Q. Are you familiar with the practice of motor carriers with their connecting lines which is generally called swapping of freight?

1377 A. Yes, sir.

Q. Will you describe how that works?

A. Well, you try to balance tonnage with them. If you give them a lot of freight, they will try to give you freight as much as you give them.

Q. Do you believe that you will be in a bargaining position with the carriers in this proposed unification in the event it is consummated?

A. I do not think so.

Q. Now, in the event this unification is consummated, and the freight which you are presently interchanging with Horton is diverted to other carriers, what will happen to the tractor which you now use?

A. We will probably have to sell it to somebody. It is too large for us.

Q. Would the elimination of this interchange which you are carrying on with the various carriers involved in this merger affect your business in any manner?

A. Yes; it would affect it some.

Mr. MILLER. That is all on direct.

Exam. BAKER. Cross-examination.

Cross-examination by Mr. MACDONALD:

Q. Mr. Smith, what territory do you serve now that is not served by any of the eight lines in the proposed merger?

1378 A. It is a very small section, what we call the Murphy branch. That runs from Asheville to Murphy and Chattanooga and as far as Bryson City, 50 or 60 miles that way.

Q. Not Chattanooga?

A. No, sir.

Q. Do any of the lines in the unification go to Chattanooga?

A. I don't think they do.

Q. Insofar as that particular branch is concerned, then, you will still have one route upon which you could receive exchange business if it were offered to you?

A. It would be part of one route.

Q. The exchange business which you are now getting is carried over what routes?

A. What we are getting goes over our entire system.

Q. So that the transfer business you receive, or at least the need for any carriage by you of transfer business, will be restricted to this one route to Chattanooga?

A. That is the way I feel about it; yes, sir.

Q. Can you indicate, if you feel that it is not against your best interests as a business man, the amount of tonnage which you do interchange at these principal points you mentioned?

A. On an average of eleven, twelve hundred dollars a month, our part of the haul.

Q. That refers to the business you receive from Horton at Hickory?

1379 A. That is right; Hickory and Charlotte.

Q. What have you to say regarding the business you receive from Southeastern at Boone?

A. I couldn't tell you on that. Sometimes it is pretty good and sometimes it is not such an awful lot on interstate. That is, from the east.

Q. You mentioned interchanging with Barnwell. I believe. Will you indicate where that takes place?

A. Mostly in Charlotte. We do not have so awful much to interchange with Barnwell.

Q. Barnwell plus Transportation serve the territory you serve pretty completely, do they not?

A. That is right; yes, sir.

Q. And Barnwell and Transportation do have exchange agreements even so far as interchanging trailers; is that right?

A. I think so.

Q. You mentioned interchanging with Transportation. Can you indicate at what point that takes place?

A. At Asheville.

Q. I do not believe you distinguished between business received from and business turned over to these lines. Does any of this exchange consist of any freight you turn over to them?

A. Yes; but I couldn't tell you just exactly how much. Horton, of course, gives us quite a bit more tonnage than we give him.

Q. The freight which you turn over to them is destined 1380 for what territory?

A. Going to the east.

Q. By that you mean the Pennsylvania-New York district?

A. That is right.

Q. Have you ever had any discrimination in the matter of exclusions or limitations in tariffs affect your business?

A. No; I would say not. We are restricted to certain classes going to the east, on account of not enough money for the haul. I guess.

Q. In regard to the exchange business which you deliver to them going to the east, have you been satisfied with the share of the through tariff which you have been receiving?

A. Yes, sir.

Q. And you do anticipate that you may lose this business if the unification is consummated?

A. I feel that I will; yes.

Mr. MACDONALD. That is all.

Exam. BAKER. Any further cross-examination?

By Mr. SULLIVAN:

Q. How much of that business is routed by the shippers? Do you know?

A. I couldn't tell you.

Q. Well, is some part of it routed?

A. I have an idea it is; yes.

Q. And do you solicit business for your lines from customers in your territory?

1381 A. Yes, sir.

Q. And you try to get those customers to—well, the business you get, they send over your lines and that is automatically routed over your lines?

A. Yes.

Q. Now, do you try to have those customers route freight over your lines when it is coming into the territory?

A. Yes, sir. Over our lines—you mean coming from the east?

Q. Yes.

A. We are asking to route it by Horton and our lines.

Q. You ask to route it Horton and your lines?

A. That is right.

Q. And at least to some considerable amount they do that?

A. That is right.

Q. And you would expect to continue asking them to route it after this acquisition is effected, if it is effected?

A. If we still have an interchange agreement; yes, sir.

Q. Well, if you had an interchange agreement with someone else—

A. We would try to change to another line.

Q. You would try to take the business away from Horton, unless he was treating you right?

A. Yes.

Q. One thing I wanted to ask you about, sir, which I see in my notes. You say that truck lines dislike interchange where  
1382 they could serve a territory direct. Does Horton interchange with anything that he can serve direct?

A. No, sir—yes; he does, too. In Charlotte he interchanges some Hickory freight with us, that he could serve direct, but we have a quicker schedule than he does; that is the reason.

Q. So apparently the business you were able to get was because you give a better service to the public than he can give?

A. Some places; yes.

Q. And in order to satisfy the shipper he sends the freight over your line, because it is quicker?

A. That is right.

Q. Now, then, you mentioned Chattanooga. Aren't there some defense industries presently at Chattanooga?

A. I think there are, and probably some going in, too.

Q. There are several plants being built there, are there not?

A. Yes, sir.

Q. And no lines in this proposed merger have rights to Chattanooga?

A. I do not believe they do.

Q. Are there any other lines, other than yours, running to Chattanooga from Asheville or any of those interchange points?

A. Yes, sir.

Q. So that the companies in Associated Transport would have to either ship over your line or make a connection different from that which they use now in order to get to Chattanooga?

1383 A. Probably so.

Q. And that leaves you in a pretty good strategic position so far as they are concerned, doesn't it?

A. In only a section, from Bryson City to Chattanooga.

Q. Well, if they want to get freight to Chattanooga, if they get customers who want to get freight to Chattanooga, you give—I mean we are just looking at this—you give the best service to Chattanooga. I assume you have.

A. I have got as good a service, I feel, as the rest of them.

Q. So that you are in a position where, if they did not give you a reasonable break in the freight somewhere else, you would probably be a little less interested in taking the freight for them to Chattanooga, wouldn't you?

A. Well, I don't know.

Q. Well, I mean—let us put it this way: Do you think there is any likelihood that you would deprive them of this connection to Chattanooga if this merger is approved?

A. No; I wouldn't think so.

Q. Pardon?

A. I said no; I wouldn't think so. I would not deprive them.

Q. You have it within your power to do it, though, haven't you?

A. Well, to a certain extent, if you can get your customers to agree to it.

Q. Well, that is freight to Chattanooga, isn't it?

A. Not necessarily.

1384 Q. Your customers mostly?

A. We have three or four competitive lines going into Chattanooga.

Q. I mean the freight presently being handled in and out of Chattanooga is principally freight that you control?

A. Well, we don't handle traffic in and out of Chattanooga with any of the eastern carriers.

Q. Why is that?

A. I don't know whether there are any moving any that way or not.

Q. By the eastern carriers you mean Horton—

A. That is right.

Q. Barnwell, and so forth?

A. That is right.

Q. Well, have you ever made—I mean you maintain solicitors who go to Chattanooga to see the customers, don't you?

A. Surely.

Q. Have you ever made an effort to get freight from the east to Chattanooga?

A. Not to a great extent.

Q. Well, whatever freight there is going in and out of there—that is, at least theoretically—it is within your power to get and control?

A. If some other competitor don't beat you to it.

Q. There are other competitors in that territory that  
1385 make it difficult for you to get the freight?

A. That is right.

Q. What is your gross annual volume for 1940, let us say?

A. You mean in dollars and cents?

Q. Yes.

A. Oh, it runs somewhere around \$32,000 a month; in the neighborhood of that. I couldn't give you the exact figure.

Q. How many lines do you interchange with altogether?

A. Seventy-five or eighty.

Q. Seventy-five or eighty?

A. Yes.

Q. Is Mason and Dixon one of them?

A. Very little with Mason and Dixon.

Q. But you do interchange with Mason and Dixon?

A. Some; yes.

Q. And Mason and Dixon serve Chattanooga, do they not?

A. That is correct.

Q. So, at least so far as you are concerned, you do interchange with competitors?

A. Some interchange with competitors at points that they do not serve, that they may be competitive to some other point that we serve.

Q. You feel that it is in the interest of the shipper to have the best and most improved service possible?

A. That is right.

1386 Q. Do you feel that if this merger would result in the improved service to the shipper over a wide territory all the way up the Atlantic coast—you feel that, regardless of the fact that it did result in improved service, the merger should be denied by the Commission because of any fear that you presently

have that you might lose some of this interchange business with Horton?

A. I am not testifying to try to get it denied; just the possibilities where it can affect me.

Q. Well, as I understand you, then, Mr. Smith, you do not mean by your testimony that you are here as a protestant advocating that this be denied; you wish to bring to the attention of the Commission that there is just one thing that concerns you and that is that you might lose some freight which you presently enjoy through a connection with Horton and, to a lesser degree, some others?

A. That is exactly it.

Mr. SULLIVAN. Thank you very much, sir.

Mr. MILLER. I believe I stated that that was to be the purpose of all my witnesses.

Mr. SULLIVAN. We finally got together.

Redirect examination by Mr. MILLER:

Q. Has your interchange with Horton and others been profitable?

A. I think so.

1387 Q. Now, getting back to this Chattanooga picture, what is the logical gateway for service from eastern points to Chattanooga?

A. I would say through Roanoke, Virginia, and down the valley there, down to Knoxville.

Q. Down to Knoxville?

A. That is right.

Q. Now, how do you reach Chattanooga from Knoxville?

A. Well, we do not reach Chattanooga from Knoxville; we would have to go back to Asheville and then to Chattanooga.

Q. That would be a circuitous route?

A. Yes.

Q. So you never felt that you have been in the competitive picture insofar as traffic from the east to Chattanooga is concerned?

A. No.

Q. That is the reason you have not solicited that freight?

A. That is right.

Q. I believe you stated that you also operate in intrastate commerce.

A. Intrastate in North Carolina; yes, sir.

Q. And is that more or less a local service?

A. That is right.

Q. Do you know whether or not the shippers have found that service of considerable value to them?

A. Yes, they have.

1388 Q. Is your intrastate business, apart from the interstate business, sufficient enough to maintain your operation?

A. Not with the same amount of equipment we have; no, sir.  
Mr. MILLER. That is all.

By Mr. SULLIVAN:

Q. You do not mean to imply, do you, that all your interstate business is interchange business?

A. Oh, no.

Exam. BAKER. Mr. Smith, do you interchange equipment with any other carrier than Horton?

The WITNESS. No, sir. We have a few times on machinery, something like that, where we take another fellow's trailer and pull it to destination, where it is almost impossible to rehandle it from his trailer to ours. Just a few times; not to any great extent.

Exam. BAKER. You mentioned the figure of \$1,100 as being the amount of interchange with Horton. Was that \$1,100 a month?

The WITNESS. Yes; on an average.

Exam. BAKER. Does that represent entirely business received from Horton, or does it represent business received and delivered?

The WITNESS. Received and delivered to him, the whole interchange, what we give him and what he gives us.

Exam. BAKER. What proportion of that \$1,100 represents business received from Horton?

The WITNESS. I couldn't hardly tell you. I just don't  
1389 know. He gives us quite a bit more than we give him.

Exam. BAKER. Would you say 60 percent?

The WITNESS. It may run more than that. I expect it runs more.

Exam. BAKER. What is the total volume involved in your interchange with all of the carriers involved in this unification? Could you give us an approximate figure on that?

The WITNESS. No, sir.

Exam. BAKER. Of that \$1,100, is any part of the business involved destined or originating at points which none of the carriers involved in this proceeding could serve?

The WITNESS. It might be a little of it, but very little, because they would not be competitive to me, as I said, from Bryson City to Murphy, which is mostly receiving points instead of shipping points.

Exam. BAKER. With respect to the amount received from Horton Motor Lines, could you approximate in any way the amount of that, or the proportion of that which is routed by the shipper over your line?

The WITNESS. No, sir; I could not. We are working very close together, and his solicitors come in our territory, and he gives us all routed and unrouted, too, in the territory, and I don't know just what percentage would be routed.

Exam. BAKER. What would be the effect on your company if you lost all of the business which is now interchanged with 1390 the carriers involved in this unification?

The WITNESS. Probably I would have to put off some equipment, some employees.

Exam. BAKER. How much equipment?

The WITNESS. I could hardly say. I don't know. I know we would have to put one tractor off. It is too large to go to Tennessee, on account of the weight restrictions in Tennessee.

Exam. BAKER. How many employees would you have to put off?

The WITNESS. I don't know.

Exam. BAKER. How many units of equipment do you presently operate?

The WITNESS. We have 63.

Exam. BAKER. And you feel it would be necessary to put off one unit of equipment if you lost all of this traffic?

The WITNESS. Yes; we would have to cut one at least, and maybe more; I couldn't say at the moment.

Exam. BAKER. What is your best estimate?

The WITNESS. I would say two or three.

Exam. BAKER. What effect would that have upon your ability to render service to the public?

The WITNESS. Well, I don't know as it would have any great effect on it. We have other freight that is going into that same territory that would not be cut off—taken all away from us.

1391 Exam. BAKER. Thank you, Mr. Smith.

Witness excused.

(Witness excused.)

Mr. MILLER. Mr. Lewis:

W. D. LEWIS, being first duly sworn, testified as follows:

Direct examination by Mr. MILLER:

Q. State your name and address, please.

A. W. D. Lewis, High Point, North Carolina.

Q. What is your occupation?

A. Vice president, Lewis & Holmes Motor Freight Corporation.

Q. How long have you been engaged in that capacity?

A. Well, in that particular office four years. I have been engaged in Lewis & Holmes since ten years.

Q. What are your duties with reference to your present occupation?

A. General.

Q. What do you mean by that? Are you in the operating department?

A. All of it.

Q. All of it. How long has your company been engaged in business?

A. Since 1929.

Q. Is it a common carrier of general commodities?

A. It is.

1392 Q. Where does it operate?

A. It operates in North and South Carolina and Georgia.

Q. Are you generally familiar with what is involved in this proceeding?

A. Partly, the southern part, that part included in our territory, I would say.

Q. Are you generally familiar with the operations of Barnwell Brothers, Horton Motor Lines, Southeastern Motor Lines between the east and the south?

A. Not so much between the east and the south as the territory we operate in.

Q. Within the south?

A. Within the south.

Q. Does your company engage in interchange with other common carriers?

A. It does.

Q. What percentage would you estimate of your tonnage is interchanged with other carriers?

A. Sometimes it runs a little better than 50 percent, sometimes a little under, most of the time a little over.

Q. Do you consider such interchange traffic desirable?

A. Well, it is, you might say, vital, although there is some of it worthless, but as a whole it is vital to our being in business.

Q. What are your company's principal points of interchange?

1393 A. High Point, Greensboro, Winston-Salem, Charlotte, North Carolina; Greenville and Columbia, South Carolina; Augusta and Atlanta, Georgia.

Q. Does your company now interchange traffic with any of the carriers involved in the proposed unification?

A. It does.

Q. Do you believe that such interchange with your line will be continued if this proposed unification is authorized?

A. Personally I don't think it would, except for those points not served by any member of the consolidation.

Q. Could you name those points that you serve that you know are not served by either Barnwell, Horton, or Southeastern?

A. Or Transportation?

Q. Or Transportation.

A. There is some territory in South Carolina that we serve that none of those serve. The only territory we have that none of those serve is Columbia and Augusta, I believe.

Q. Is your company a competitor of Transportation?

A. To a great extent. Transportation is in competition with us over our entire operation, except from Charlotte to Columbia and Augusta.

Q. Would you mind naming the carriers involved in this proposed unification with whom you interchange?

A. We interchange with Barnwell Brothers, and Southeastern, and Transportation. And I don't know whether you call it 1394 interchange with Horton or not; we do originate some freight that is routed over his line, but he has to pay us the local rate, because he has us restricted in the tariff.

Q. Would you say that the combined operation of Horton Motor Lines, Barnwell Brothers, and Transportation will substantially reach every point served by your company?

A. No; it would not reach all of them. They would serve—they would have pretty good coverage over the same territory we do.

Q. Would you be able to estimate how much tonnage that you originate in the south and turn over to, say, Barnwell Brothers?

A. Well, that would be very, very small. I don't know of hardly anything unless we have a movement on occasion that is routed by them, and sometimes we get hold of shipments that want some good service in the east.

Q. Would your company look with favor upon interchanging freight with a carrier competitor?

A. Well, that all depends on the circumstances. We do interchange with our competitors, but only in cases where we know we are protected, either we control the routing or else the shipper has such control over his movement that he can see to it that the competitive line gives that to us.

Q. Why is it that you do not favor the interchange with your competitors? Just state the reason.

A. Well, when you turn over your shipments to your competitor serving the same points you do, originating freight from the same points you do, you are giving him a pretty good lead. And, after all, that is what they are paying me to find—leads, and there is no need to just donate them.

Q. Are you familiar with the general custom followed by motor carriers with respect to what is termed swapping freight?

A. As it applies in our immediate territory, I am familiar with it.

Q. Do you interchange with a substantial number of carriers at Atlanta, Georgia?

A. We do.

Q. And, to your knowledge, does Horton Motor Lines also interchange with those same competitors?

A. They do.

Q. And Horton Motor Lines serves points in North Carolina and South Carolina that you also serve?

A. That is right.

Q. Now, in the event that this unification is consummated, how will your position compare with that of the unified carriers with respect to swapping freight in Atlanta with those carriers with whom you presently interchange?

A. Well, at the present time some of those carriers in Atlanta—we have some carriers operating out of Atlanta intrastate who can serve a pretty good territory in Georgia that no one else serves, and naturally Horton and Transportation and Lewis, & 1396 Holmes and all of us have to give that one line that freight.

We don't have any choice. And in return that one line has got to divide his unrouted business to give us anything in return. And it has been our experience in the past that Horton, without being combined with Transportation and all these others, has been able to have enough tonnage, where he could have routing control over some few of these lines as to the division and revenue, and also in demanding so much in return also makes a hardship on us, that what these lines bring in to interchange with Horton had to be of the higher rated commodities, because we have the lower rated restricted, and, of course, there isn't any reason in the world, legally why we couldn't restrict it, too, but being right in the immediate territory and associated with the shippers, we don't favor any classes of commodities where we are in contact with the shippers, and also they have enough volume now without having any added strength in connection with some of those lines there whereby they receive the advantage over us in that this connection there in Georgia—we only have one serving the territory—

will accept this division with 20 percent or 15 percent minimum, whereas they hold us to 25 percent minimum.

**Q.** If this unification is consummated, would there be any effective means for the unified carriers to discourage your company from interchanging freight with it?

**A.** Oh, yes. I think it would be the same thing they have 1397 now, only it will just be stronger.

**Q.** What means do they have now?

**A.** Well, they have the means of placing restrictions in the tariff whereby certain published rates will not apply over their line in connection with only certain carriers. Our name doesn't happen to appear there in some cases.

**Q.** Have you ever received any competition from a carrier known as Howard Hall Company?

**A.** No, sir.

**Q.** Jack Cole Company?

**A.** No, sir.

**Q.** Are you familiar with any of their operations?

**A.** Well, I see their trucks and have been in meetings with them.

**Q.** But you do not consider them competitive in the territory in which you operate?

**A.** I never have heard of them bothering anything we were handling.

**Mr. SULLIVAN.** Is that material, Mr. Examiner?

**Exam. BAKER.** That is in connection with the testimony of the applicant introduced with respect to those companies, to develop whether or not the companies which applicant has named are actually competitive in the field involved.

**Mr. SULLIVAN.** Competitive with him or competitive with Horton and Barnwell?

**Exam. BAKER.** Well, if he operates in the same territory 1398 as Transportation and some of these others, it would indirectly be relevant.

**Mr. SULLIVAN.** All right. I withdraw the objection.

**Exam. BAKER.** You may develop the details.

**Mr. SULLIVAN.** That is what I have in mind.

**By Mr. MILLER:**

**Q.** Is your company competitive with the McLean Trucking Company, Inc.?

**A.** Not that I know of. We have had some—handled freight in connection with McLean. That was on a local rate.

**Exam. BAKER.** You might clarify what you mean by your company not being competitive with a particular company. By that do you mean that they do not operate in the same territory as

you or that you have not felt their competition in connection with the business you handle?

The WITNESS. I mean that—I do not mean to say where they operate, or anything. I suppose they operate—in fact, I know the ones he has mentioned so far operate into or out of the same territory we are in, but that whatever they haul is not, or at least we do not run into the same thing in our solicitation or handling. In other words, I do not know of any tonnage we have ever lost because of those operators.

Mr. SULLIVAN. I suggest, Mr. Examiner, that with that sort of an answer it can't possibly be relevant.

Exam. BAKER. I feel it is relevant. You may proceed.

1399

By Mr. MILLER:

Q. Are you familiar with the operation of Hooks Motor Line?

A. Yes, sir.

Q. Where are his headquarters located?

A. High Point, North Carolina.

Q. Do you know whether or not this carrier is engaged in the local transportation of freight, say, between Charlotte and Greensboro or Charlotte and High Point interstate?

A. Engaged in the transportation of local freight between Charlotte and Greensboro?

Q. Interstate freight between Charlotte, Greensboro, and High Point.

A. Shipments that move between Charlotte and Greensboro that are interstate shipments?

Q. Right.

A. I am not in position to say definitely that he is, but I believe he is. I can't say definitely, because I don't know that to be a fact.

Q. If you know, principally what commodities does Hooks Motor Line transport?

A. To High Point?

Q. Yes.

A. I am more familiar with High Point than any other place.

Q. All right.

1400 A. Well, moving north, as we call it, he handles the majority of the furniture from that section. I don't know what he gets from the connecting lines.

Exam. BAKER. Does he transport other commodities than furniture?

The WITNESS. Yes, sir. So far as I know, he transports general commodities, but just as it applies to High Point his business around there is mainly furniture. The reason I say that is I

am acquainted with the fact that he uses open top trucks, because we have some interchange business with him, and when it comes to our miscellaneous freight we don't like to give it to him; we give it to some others going up east that use different type of equipment, handle different type of freight in the majority.

Exam. BAKER. Thank you.

Mr. MILLER. That is all the questions I have.

Cross-examination by Mr. MACDONALD:

Q. Mr. Lewis, you mentioned that in Georgia, particularly out of Atlanta, there is a situation in which only one carrier seems to be serving in one route. Will you explain why that is so?

A. Well, out of Atlanta you have these intrastate operations under the supervision of the Georgia Public Service Commission, and, as I say, there are some whom they don't permit anyone else to have a franchise over that same route, and there are others that permit as many as two, but there are still those  
1401 that have one.

Q. And that applies to business which would be landed at Atlanta for distribution intrastate throughout the state; is that right? In other words, does it affect the interstate carriage?

A. Well, there is a question there in Georgia where an interstate carrier operating through those towns can move interstate shipments from, say, Atlanta to those points, even though his particular part of the haul does not move in and out of the State, but the shipment just come from out of the State which the Georgia Public Service Commission says we cannot do. But that is the question that I do not know about.

Q. You mentioned that some of this exchange business—I believe you stated you were held to a 25 percent minimum, where others were held to 15 or 20 percent.

A. That has been the case in the past; yes, sir.

Q. Will you explain the actual operation or feature of that business?

A. Well, in other words, if one of our connections requests a shipment from High Point to Philadelphia, and we carry to Atlanta or into, well, say, just some point out there—some of them haul a hundred miles, I believe—and they insist on 25 percent minimum, whereas we already put out 60, 65, or 70 percent, and we want a little bit of it and leave him his part, why, there isn't  
much to divide.

1402 Q. What have you to say as to the possible effect on the business originating from these Georgia carriers by way

of return for that which is exchanged to them of the unified service offered by Associated Transport, Inc., when and if this application is approved?

A. I don't believe I could be able to compete with them on that basis.

Q. Do you feel that there is a possibility of restrictions keeping you from their tariffs on through rates?

Mr. SULLIVAN. Whose tariffs?

Mr. MACDONALD. I am speaking of Associated Transport, Inc., as proposed.

Mr. SULLIVAN. Oh.

A. Well, at present there is with one of the carriers, and I see no reason—

By Mr. MACDONALD:

Q. Let us put it this way: Would it be to their best interest to restrict you from their tariff, so far as you can tell?

A. It might be insofar as certain territory is concerned.

Q. That is, the territory which you serve that they also serve?

A. That is right.

Q. Is it your experience that a carrier operating into and out of a territory served locally by a second carrier is competing for the same business as that local carrier?

A. I don't get just exactly—

1403 Mr. MACDONALD. Will the reporter read the question, please?

(Question read.)

A. He may be holding himself out to handle the same things that the local carrier is, but if he does not have the proper set-up there that the local man does, why, I doubt if he would be considered competing in the same field.

By Mr. MACDONALD:

Q. We have an example, I believe, that you mentioned, that there was a possibility—or, at least, to your knowledge, the Howard Hall Company did operate at least partly in the same territory that you operate in but they were not in competition with you. Does that indicate that they may be in the same territory but operating in a different direction from that territory?

A. Well, Howard Hall Company is located in Birmingham, Alabama, and when they are hauling into North and South Carolina, at least essential parts of North and South Carolina, they come all the way from Atlanta to destination over our regular routes, and they so far as I know—I don't know of any business they have solicited or obtained going out.

Q. Is it your position, then, that the business they move from Birmingham into South Carolina points, say, Greenville, is business originating in Birmingham and that their carriage is not particularly confined to freight originating in Atlanta or other points on concurrent routes which you have with them?

A. That is true.

1404 Q. With whom do you exchange at Greensboro, North Carolina, if you care to state.

A. You mean all of the operators that we interchange with at Greensboro?

Q. Well, if there are many, just state the largest.

A. I would say that our heaviest interchange is with Motor Transit Company.

Q. And they operate where?

A. Locally within the state and to Richmond, Virginia.

Q. Is it your statement that business in the east-south operation—that is, from points where your lines operate, into Pennsylvania, New York, New England—is carried principally over lines concerned in this unification? I am speaking of traffic which you originate in the south destined for points in the north which you have to transship to other carriers.

A. Well, what business we get going into that territory now we usually interchange with Mundy Motor Lines and Brooks Transportation, and probably some little bit with Barnes.

Q. Is there any particular reason why you do interchange with Brooks and Mundy?

A. Well, if the shipper does not route it, we would give it to Mundy in return for the business he gives us that is unrouted; and if it was not routed and we wanted the proper service that we felt our shipper deserved, we would give it to Brooks, because he  
1405 seems to be about the only operator in that territory going east that we feel like would give dependable and reliable service, other than Barnwell and Horton.

Q. Why don't you give it to Horton?

A. Well, we do not have any interchange arrangements with Horton. They have restrictions in the tariff whereby they only interchange with certain lines.

Q. So you are not able to exchange with Horton.

A. No, sir. It is impossible for us to interchange with Horton, unless it is some business that Horton has secured from a point that we serve and he is agreeable and willing to pay us the local rate, which does happen.

Q. That makes it a somewhat unprofitable operation for you.

A. Well, I would not be able to say about that.

Q. Do Brooks and Mundy compete with you particularly in the territory which you serve?

A. Brooks does not overlap us at all; Mundy practically none.

Mr. MACDONALD. That is all the questions I have, Mr. Examiner.

By Mr. SULLIVAN:

Q. How many interchange carriers have you, please, Mr. Lewis?

A. I do not have any idea. The only time I ever checked on the number of connecting lines we have had—I started checking them in Atlanta and got to 33 and got disgusted and quit.

Q. That was at one point?

A. Yes, sir.

1406 Q. So that it probably runs into several hundred at each of the interchange points.

A. No, sir. Atlanta would be the largest by far.

Q. Well, you would have maybe a hundred all together?

A. I wouldn't say many more than a hundred. Probably we have, but I wouldn't say definitely.

Q. And these lines give you freight, and you give these lines freight?

A. That is correct.

Q. And you like everybody else try to spread the freight you have to give—the unrouted freight you have to give around to your best advantage, to try to get more freight from more lines; is that right?

A. Well, we used to, but we have tried to curtail that as much as possible; to keep it with as few lines as we could.

Q. Now, why?

A. Because it involves too much in interchanging with so many different lines.

Q. How do you keep from having interchange with other lines?

A. Well, if we have unrouted freight going into a territory, and there is more than one connection, we can give it to one or all, as we so desire.

Q. That is your method of keeping from having to interchange with too many lines, is it?

A. Yes, sir.

1407 Q. Do you also restrict them in the tariff?

A. I started to say, "No," but I happen to realize we do have some restrictions in there at the present time, but I don't approve of that.

Q. In other words, you believe that you can take care of this situation pretty well by picking out the lines you want to turn the freight over to?

A. To some extent; not altogether.

Q. You recognize that it is difficult, and not poor business, to have too many connections?

A. Absolutely.

Q. You are not very critical of Horton, are you, for the restrictions he has?

A. Never have been, except in one instance.

Q. What was the one instance?

A. Well, we had a very good movement of freight to a certain point in connection with Barnwell Brothers, and the customer did not want anybody to bring this freight in to him except Lewis & Holmes, and it so happened that Horton got the movement away from Barnwell and would not accede to the customer's wishes of opening up the tariff to let us concur with them, and so we lost that.

Q. But that was the customer's wishes, for some reason or another, in the last analysis.

A. Well, it is beyond his control.

1408 Q. Well, he did not have to give Horton the business, did he?

A. I can't tell you anything about it, why he gave it to Horton over Barnwell.

Q. All right. Of course, you have no assurance, whether the merger is approved or whether it is not approved, that the lines you named with whom you presently interchange freight, and who are engaged in this proposed unification—you have no assurance as to whether or not they will continue in the future to interchange with you, regardless of the merger?

A. You say whether they would or would not?

Q. Yes.

A. No, sir; I have no way of telling.

Q. You have not always interchanged with them to the same extent that you are presently doing?

A. No, sir.

Q. Sometimes you did more interchange with one, sometimes less; is that right?

A. That is probably true.

Q. As I understand it, you use Mundy, Brooks, and other lines for your northbound business in return for southbound business they bring to you?

A. We do.

Q. And I gather that the service they render is satisfactory, is it?

1409 A. Well, I would not consider any service that I know of in my territory into the east, other than Brooks—and Mundy does very good part of the way, but all the way through

to Philadelphia and New York and New Jersey we have not found them to be as satisfactory as Brooks.

Q. Well, anyway, Brooks is perfectly satisfactory and a good carrier?

A. Yes, sir.

Q. Is Barnwell's tariff restricted, going north?

A. Not as to our interchanging with him.

Q. But you prefer to use Brooks—put it this way: You do use Brooks.

A. More than we do Barnwell.

Q. Do you have interchange with Mason and Dixon?

A. Only one instance that I know of.

Q. They have a service up north?

A. Sir?

Q. They have a service?

A. In the east?

Q. Yes.

A. Yes, sir; they operate into New York.

Q. You could, if you chose, interchange with them as well?

A. In our territory?

Q. Yes, for the north or east, or whatever you call it.

A. Not if what they say is correct.

1410 Q. What is that?

A. That they would have to carry it around through Asheville or some other point. I don't think the service would be very good. We would not want to interchange with them carrying on a circuitous route.

Q. Well, you do not know what service they render from down there?

A. No, sir.

Q. Did I ask you how many pieces of equipment you operate?

A. No, sir.

Q. How many do you operate?

A. Fifty, more or less.

Q. How much was your revenue in 1940?

A. \$375,000.

Q. Could you tell us how much, in dollars, interchange with Horton amounts to in the course of a year or a month?

A. We do not interchange with Horton.

Q. With Barnwell, then.

A. I would not have the slightest idea. It would not be but very small.

Q. It would be a very small amount in dollars?

A. Yes.

Q. If this proposed unification were found to be of benefit to the shippers, you would be in favor of it being approved by the Commission, would you not?

1411 A. Well, I am not here to protest the application. I just merely want to state our position as we see it as an operator, which I think is vital to the Commission to have in consideration of this application. I am not opposed to anything that is legal and carried out properly.

Q. Well, let me ask you this, then: Is your position somewhat similar to this, with respect to that which you are worrying about, that you have some amount of interchange with Barnwell, which you say is not very much in dollars, that you are a little fearful that you might lose that if the merger went through? Is that one of your points?

A. That is a small point.

Q. All right. Now, then, your next point is you feel on interchanges out of Atlanta going to some Georgia points there that the combined group might have a better bargaining power with the Georgia carriers than you have?

A. That is true.

Q. The Georgia carriers—that is, other than yourself—with the other carriers involved in this unification.

A. That is true.

Q. So that those other carriers have a reasonably good bargaining power, too, haven't they? I mean, the other carriers other than those in the unification who come into Atlanta have a reasonably good bargaining power with the Georgia carriers?

1412 A. You mean the ones operating in the same territory that the ones do in the consolidation?

Q. Yes.

A. I am not familiar with their volume.

Q. All right. Now, then, when you get over to Georgia, particularly Augusta and Columbia, nobody in this proposed unification has any service to those points?

A. Not that I know of.

Q. And do you render substantial service to those points?

A. We do.

Q. If the companies in the Associated Transport wanted to get freight to those points and from those points, you are certainly in a position to handle that freight for them?

A. We are in a position to handle it, but we do not handle much of it now.

Q. Well, some other carrier gets it, is that it?

A. Yes.

Q. So that the unification would not be depriving you of any particular freight to those points?

A. Very little.

Q. Now, then, do you solicit at those points for business up to the east, as you fellows call it?

A. We do.

Q. And do you obtain some business down at those points?

1413 A. Well, not as much as we would like to, because we do not have the opportunity to interchange going into the east.

Q. Well, can't you pick it up somewhere and turn it over to Brooks?

A. Brooks would not—the commodities that move from down there, cotton piece goods—and I am not familiar with the different classifications of the commodity of cotton piece goods, but they are of a lower class, and Brooks would not handle it; I mean he has a restriction in his tariffs.

Q. How about Mundy? He would handle them, wouldn't he?

A. I do not know of any restriction he has on them, but we would not undertake to interchange with Mundy because we would feel like he would want too big a division.

Q. How about Akers?

A. We never have interchanged anything that I know of with Akers.

Q. He has a service that is available running up clear to Boston, hasn't he?

A. I understand that he does. He asked us to bring some movements out of South Carolina to him, but he wanted it too cheap.

Q. How about Harris Brothers?

A. Harris Brothers have their rates published in the tariff by Cooper in Greensboro, which we do not concur in.

Q. You mean you restrict yourself with respect to that tariff, is that it?

1414 A. Well, we have our rates published through the Southern Motor Freight Conference, where the operators do the same type of business we do.

Q. Could you arrange it so that you could concur with him?

A. Well, we were in the tariff. We just recently removed our participation in it.

Q. Well, if his service is not available to you that is by your own act, isn't it?

A. Well, I do not believe we would be able to go back in there.

Q. Well, without going into that question, I say it was your own act that removed your concurrence with him.

A. That is right.

Mr. SULLIVAN. That is all the questions I have.

Exam. BAKER. Redirect?

Mr. Lewis, do you interchange any with Atlantic States?

The WITNESS. We do.

Exam. BAKER. On traffic moving to the east?

The WITNESS. No, sir. We only have one movement that we interchange with them on.

Exam. BAKER. You do not operate south of Atlanta, do you?

The WITNESS. Nothing more than irregular loads to points nearby Atlanta.

Exam. BAKER. In connection with carriers other than Transportation that operate south of Atlanta in competition with

Transportation, Inc., who might be presently interchanging traffic at Atlanta with Horton Motor Lines, do you feel that if this proposed unification were consummated that those carriers would be inclined to change their interchange arrangements to other carriers other than Horton?

The WITNESS. You mean the carriers that are operating in competition to Transportation?

Exam. BAKER. Yes; south of Atlanta.

The WITNESS. They would quit interchanging with Horton and go to others.

Exam. BAKER. Do you feel that they would be likely to do that in view of the fact that the consolidated operation would be in competition with them south of Atlanta?

The WITNESS. Well, from practical experience I think they would.

Exam. BAKER. So would it be a possibility of getting some additional freight by reason of that?

The WITNESS. It might be true, but the only service we have down a certain route there is by Transportation that no one else serves.

Exam. BAKER. No other carrier operates over the same route south of Atlanta that Transportation operates over?

The WITNESS. Some parts of it. If there are, I have never heard of them. You see, Transportation before they came into this they bought two operations over the same route, and that did not leave any competition that I know of below Montgomery, 1416 Alabama, between there and Mobile.

Exam. BAKER. Well, aside from operations over the same route, are there other carriers operating to the principal points south of Atlanta over perhaps different routes? Do you know?

The WITNESS. No, sir; I do not know.

Exam. BAKER. That is all the questions I have. Witness excused.

(Witness excused.)

Mr. MILLER. Mr. Examiner, may we have a short recess? I want to see if I can locate some more witnesses.

Exam. BAKER. Very well. We will take a ten minute recess. (Whereupon a short recess was had.)

Exam. BAKER. Come to order, please.

Mr. MILLER. Shall I proceed now or wait until Mr. Sullivan comes in?

Exam. BAKER. Well, we might wait a moment. You can call your witness, Mr. Miller.

JOHN M. AKERS, being first duly sworn, testified as follows:

Direct examination by Mr. MILLER:

Q. Will you please state your name and address?

A. John M. Akers, Gastonia, North Carolina.

Q. What is your occupation?

1417 A. Vice president and general manager of Akers Motor Lines, Incorporated.

Q. How long have you been engaged in that capacity?

A. Four years.

Q. Generally what are your duties with reference to your present occupation?

A. Well, general supervision of Akers Motor Lines as executive officer of the company and general manager of the company.

Q. How long has your company been engaged in business?

A. Since 1932.

Q. Is it a common carrier of general commodities?

A. It is.

Q. Where does it operate generally?

A. Generally from Atlanta to Boston.

Q. Are you generally familiar with what is involved in this proceeding?

A. I am.

Q. Are you familiar with the operations of Barnwell Brothers, Horton Motor Lines, and Southeastern between the east and the south?

A. Generally speaking.

Q. Likewise are you familiar in a general way with the operation of the other carriers proposed to be unified into Associated Transport?

A. In a general way, yes.

1418 Q. In the conduct of your business have you become acquainted with the competitive situation which affects the operation of your company?

A. I have.

Q. Does your company engage in interchange of freight with other common carriers?

A. We do.

Q. What percentage would you estimate of your tonnage is interchanged with other carriers?

A. I would say approximately 30 percent.

Q. Do you consider such interchange traffic desirable?

A. Yes.

Q. What are your company's principal points of interchange?

A. Boston, New York, Philadelphia, Greensboro, Charlotte, Greenville, South Carolina, and Atlanta.

Q. Does your company now interchange traffic with any of the carriers involved in the proposed unification?

A. Slightly. We have a small amount of interchange with Consolidated and a very little bit with McCarthy. We have a little bit of interchange with Transportation at Atlanta and I think we have one movement in connection with Barnwell Brothers out of Virginia—I think one movement out of Virginia. I think that is the extent of our interchange with the carriers involved in the proceeding.

Q. Does your company look with favor upon interchange-  
1419 ing freight with a carrier competitor?

A. We do not.

Q. Why not?

A. Because if your freight is interchanged with a competitor, why, you naturally are giving him the opportunity to try to secure the business himself; and if you interchange with a competitor it must be because the competitor would not be a competitor unless he covered the same territory, and therefore if you have to interchange with him, and he is a competitor, he then could give direct service, where you would have to interchange, which would be a very strong talking point in the solicitation of business.

Q. Are you familiar with the custom followed by motor carriers commonly called swapping of freight?

A. I am.

Q. Will you outline how that applies especially in relation to your interchange in Atlanta?

A. Well, it is the general custom for carriers to interchange business with each other on a reciprocity basis, so to speak, with the carriers, particularly the short-line carriers, that are rather restricted as to the area that they cover, will try to work with the long-haul carrier that can give him the most business, and the long-haul carrier that will have the most business and has the bargaining power naturally is in a much better position to

1420 secure freight from the intrastate operators, all those that are short-haul operations.

Q. By intrastate operators you mean carriers operating wholly within one state?

A. Within one state.

Q. And they may transport interstate freight?

A. They may transport interstate freight.

Q. Now, assuming this proposed unification is consummated, how will your position compare with the unified carriers with respect to securing unrouted traffic on this swapping basis?

A. We have found that, as far as Atlanta is concerned, and as far as New York is concerned, that the two of the carriers, Barnwell and Horton in New York, and Transportation and Horton in Atlanta, that their volume of business that is interchanged there has been a sufficient volume to pretty well take care—probably get a much better bargaining power and division with the interchange lines, short-line operators, in Atlanta, and the New England operators out of New York, and I see no reason why, with the two lines or the lines combined, whereas there would be some bargaining there, the freight would be unified, and there would be that volume which would be used in the future, which would be even a better bargaining power than it has in the past.

Q. In selecting a connecting carrier for your company what factors do you take into consideration?

A. We would consider the territory that that connecting  
1421 line handled, the business that that connecting line perhaps turned over to our company to reciprocate the business that we gave that particular company, and also the divisions that could be arranged with that particular carrier; and as far as the divisions would be concerned, that would depend a good deal on the second factor—that is, the amount of freight that you could turn over to that connecting line and that connecting line turns over to you—which would influence, I would say, the third—that is, the divisions that would be obtained.

Q. Are you familiar with the operation of Howard Hall Company, Inc.?

A. Only—I will say I am not familiar with the operation, that I know what their certificate entitles them to haul, or anything about the operation, other than that I see their trucks from time to time go through our territory, where I might happen to be, North Carolina, say, or South Carolina; but so far as their competition is concerned I have never heard any of our solicitors ever mention losing any business to Howard Hall. I never heard of Howard Hall picking up or delivering any freight in North Caro-

lina or South Carolina, or any point, for that matter, where we do business, other than business out of New York going into, say, Alabama, and to points beyond Atlanta. I have heard of some business that they have gotten there, but that would be business that, so far as we are concerned, would be interchange.

1422 Q. Do you have any knowledge as to whether or not

Howard Hall Company maintains a terminal in North Carolina, South Carolina, and Georgia?

A. Not to my knowledge.

Q. Would your testimony in relation to Howard Hall Company be the same with the Jack Cole Company, Inc.?

A. That is right.

Q. Are you familiar with the operation of McLean Trucking Company, Inc.?

A. Generally speaking.

Q. Have you found them serious competitors of freight moving between the east and south?

A. Well, McLean is much more of a competitor than Howard Hall or Jack Cole, because, as I say, I would not consider Howard Hall or Jack Cole a competitor, or serious competitor. I have always considered Jack Cole and Howard Hall somewhat in the same position in North Carolina and South Carolina as we are in the State of Virginia. We operate through the State of Virginia, but we do not pick up or deliver any freight in the State of Virginia. Therefore, I would not consider Akers Motor Lines a competitor to anyone operating out of or into Virginia.

As far as McLean is concerned, they operate mostly, as I understand, in the eastern part of North Carolina, and they secure freight out of the north into the eastern part of North Carolina, and out of the eastern part of North Carolina, although they do get some freight in the central section. I think, of North Carolina, and also in South Carolina.

1423 Q. Have you ever heard of a carrier known as the Dale Trucking Company, Inc.?

A. I have not.

Q. I believe you testified you were familiar with your competitors generally?

A. Generally speaking.

Q. Have you ever heard of a carrier by the name of Talent Transfer Company, Inc.?

A. I have.

Q. Will you describe just what you know about their operation?

A. As far as I recall, Talent—I think they are a furniture hauler from somewhere around, either in Hickory or Lenoir, or

High Point, or some place; I am not certain. I never heard of Talent—Talent has never interfered with us. I have not had competition from them.

Q. Do you know whether or not Talent Transfer operates into New England territory served by your company?

A. I have never heard any of our solicitors in New England report that they had any competition from Talent.

Q. Are you familiar with the operation of Turners Transfer?

A. Turner? No; I am not.

Q. Have you ever heard of a carrier operating between 1424 New England territory and Atlanta, Georgia, known as Hitchcock Motor Express?

A. I have heard of them.

Q. Have you received any competition, to your knowledge, from that carrier?

A. To my knowledge, we have not.

Mr. SULLIVAN. You mean to your knowledge you have not, or not to your knowledge?

The WITNESS. To my knowledge we have not had any competition from Hitchcock.

By Mr. MILLER:

Q. Do you have any knowledge of the C. L. Whitmore Fast Freight?

A. C. L. Whitmore Fast Freight? Never heard of them.

Q. Are you familiar with the operation of the North-South Freightways, Inc.?

A. Never heard of them.

Exam. BAKER. Mr. Akers, do you know all the carriers that operate in your territory?

The WITNESS. Well, I would not say that I know all the carriers that operate in our territory, but I would say that I have a knowledge of the carriers that operate in our territory that would be serious competition to our line.

Mr. MILLER. That is all.

Exam. BAKER. Cross-examination.

1425 Cross-examination by Mr. MACDONALD:

Q. Mr. Akers, you listed seven points, I believe, at which your interchange takes place largely. You mentioned Consolidated and McCarthy as receiving a little of that interchange business. Is there other interchange business at Boston and New York points that other carriers get?

A. Yes.

Q. Would that be more than Consolidated and McCarthy participate in?

A. Yes. Our interchange with McCarthy is very small; in fact, was done as a favor mere to Akers Motor Lines by Mr. McCarthy than anything else, because some points that he makes in Massachusetts that we might want to drop some freight to, he agreed to deliver that freight for us, but that is the extent of our interchange with McCarthy.

As far as Consolidated is concerned, we have a small amount of interchange with them in New York, mostly on freight coming out of the east that is actually secured by our solicitors in the south and is routed Consolidated care of Akers, New York. There are one or two instances, a few shipments that we turn over to Consolidated in New York going into the territory that they serve.

Q. Is that also pretty largely routed freight?

A. The freight that we turn over to them is unrouted.

Q. The freight you receive from them is mainly routed freight?

A. Entirely so.

1426 Q. Will you state why your exchange with McCarthy is limited in the manner which you state it is?

A. Well, McCarthy does not operate into New York, and McCarthy—as I understand, their operation is mainly intraterritorially so far as New England is concerned, and from conversations with Mr. McCarthy, they are not particularly interested—were not at that time, which was about a year and a half ago that I discussed this matter with them—they were not particularly interested in trying to build up their business into the south or from the south in connection with Akers Motor Lines.

Q. Do you have local lines in the lower New England territory of Massachusetts, Connecticut, and Rhode Island, feeder and distributing lines from Boston?

A. Yes; we do.

Q. These are part of the Akers Motor Lines, or are they exchange carriers?

A. Exchange carriers.

Q. Do you have any one or more of those carriers which serve all the points served by McCarthy, to your knowledge?

A. We do not.

Q. Is there such a carrier available to you?

A. Not that I know of.

Q. Do you depend on these local carriers in Massachusetts, Connecticut, and Rhode Island very largely for business

1427 which you carry from Boston into the south?

A. We do not.

Q. Most of your business originates in Boston to the south?

A. That is right; originates in Boston or vicinity, or Providence

and vicinity. We do have some freight that is brought in by connecting lines in that area, but that is a small part of our tonnage.

**Q.** Do you maintain your own pick-up and delivery service in Boston and Providence?

**A.** We have a local carrier that does that for us.

**Q.** That is another exchange arrangement?

**A.** That is right.

**Q.** What carriers will you have available in Massachusetts, Connecticut, and Rhode Island territory, assuming the consummation of this application, which do not compete with you in any part of your routing? By way of explanation, any carrier operating between Boston and New York would be competitive with you at least in part, would he not?

**A.** No; I would not say they would be competitive, in this respect, that they would be partially, and then in a way they would not. We do not pick up freight in Boston to be delivered to New York. Neither do we pick up freight in New York for delivery to Boston. Our operation is entirely a north-south operation. We pick up freight in the south for delivery into the north, that is, north of Virginia. We pick up freight in 1428 states north of Virginia for states south of Virginia. But we do not pick up any freight, for example, in New York for delivery into Philadelphia, or from Philadelphia into Baltimore, or any freight of that nature. We do not pick up freight, say, in Philadelphia going north into Boston, Providence, or any of the New England states. We do not pick up freight in New England to be delivered to New York, Philadelphia, or any point north of Virginia.

Therefore, in a way we would be competitive with these carriers that operate out of Boston into New York in that they could pick up that freight and bring it in to New York to turn over to some other carrier that did not operate into New England, but we would be competitive only in freight that is moving only from New England into the south.

**Q.** So far as the lines in the merger are concerned, you are competitive, then, only with what I will describe as the long haul route north to south, and you are not engaged in carrying between the intermediate points?

**A.** With the exception of in the south. We do pick up in Atlanta. Our certificate entitles us to pick up in Atlanta and certain places in Georgia for delivery into North Carolina, to Charlotte and a radius of 25 miles, and we can pick up in Charlotte and a radius of 25 miles for delivery into Atlanta and various points listed in Georgia.

Q. Do you have any particular volume of business  
1429 originating in the New York area, Buffalo, Syracuse, and  
cities in that area?

A. We do not.

Q. Do you have any particular volume of business destined for  
points in that area?

A. We do not.

Q. You do not have any particular amount of unrouted freight  
which requires exchange in the Philadelphia, New York, or Bos-  
ton terminals?

A. Of our own?

Q. Which you originate.

A. Yes. I would say that 98 percent of the business that we  
interchange with carriers in Philadelphia, New York, and Boston,  
that is, that we give to them, is unrouted freight. For the most  
part, you see, the freight we bring up from the south is cotton  
piece goods and freight of that nature, and the shippers for the  
most part do not route it; they just give it to you, and it is un-  
routed, and we turn it over to connections in those points.

Q. Would you say that l. t. l. shipments constitute the majority  
of your shipments?

A. No; I would not. It depends, of course, on the northbound  
movement. There is more volume moving going north because  
of the nature of the commodity. Southbound, why, that is not so.

It would be difficult for me to even hazard a guess as to  
1430 what percentage of our business is l. t. l. and what percent-  
age is truckload.

Mr. SULLIVAN. Excuse me. Are we talking about the number  
of shipments or revenue?

Mr. MACDONALD. We are talking about the make-up of the load.

The WITNESS. I was referring to tonnage. What I would con-  
sider l. t. l. would be a shipment less than what most people con-  
sider a truckload.

Mr. SULLIVAN. My point was, when you were talking about  
percentage, were you talking about the percentage of gross re-  
ceipts, or the percentage of the number of shipments?

The WITNESS. That is right; the percentage of the tonnage.

By Mr. MACDONALD:

Q. Would you say your operation, being more limited in the  
service of intermediate points which it gives, would differ from  
that of Horton or Barnwell Motor Lines operating from New  
York into the south?

The WITNESS. Would you repeat that question?

(Question read.)

A. I would say yes; that it would differ, because it is my understanding from the testimony that was brought out that Horton picks up freight, for example, in New York for delivery to Philadelphia, or to some of the other northern terminal cities; and I am not familiar with whether Barnwell does that or not, but we do not handle any freight of that nature.

1431

By Mr. MACDONALD:

Q. Does the comparative time of delivery which your company offers as compared with that of the Horton Motor Lines, for example, indicate anything regarding the number of stops for picking up and delivering enroute?

A. No. I would say that, so far as the time of delivery is concerned on shipments, say, going from New York to Atlanta, or Philadelphia to Atlanta, that the time of delivery on shipments picked up the same day would be similar for the two companies—for the three companies.

Q. Have you at any time desired to effect an exchange arrangement with McCarthy Lines?

A. Well, I would say that we have not been particularly anxious to do it. I planned a year or so ago to discuss this with Mr. McCarthy and Mr. Howell to try to build up more business from the south into New England and from New England into the south, but about that time the other merger was considered and I did not think it would be expedient for me to discuss the matter then.

Q. You refer to the application heard about a year ago in Docket No. MC-F-1223 and related numbers?

A. I am.

Q. Is it possible for you now to estimate in business volume, the number of vehicles, or other factual data, the effect on your business caused by this merger?

A. As far as our company is concerned, I see very little effect, direct effect, of the merger on the number of vehicles that we operate or the freight that we are now handling, because, as I say, the freight that we are handling in connection with any of the carriers involved in this merger is so small it is such a negligible part of our business, that we would not be affected.

Q. Do you believe that your company is in the position of being more or less independent of exchange carriers for a considerable portion of its volume?

A. Well, I, of course, do not know. I am not familiar enough with all the other operators as to their particular position, but I do feel, in talking with the various lines, that we depend about as little on interchange freight as any carrier I know. I would

say that 30 percent of the freight that I said that we interchange, that of that amount 25 percent of it is freight that we originate and give to our connections and only about five percent is freight, that we actually receive from connecting lines.

Q. Do you know of any other large carrier which operates from Atlanta into Boston?

A. Any other large carrier which operates from Atlanta into Boston? I do not. There is no large carrier—I know Carolina Freight Carriers through some recent purchase of some rights into Atlanta or leasing of some rights—I do not know exactly what the situation is, but I understand that they 1433 operate into Atlanta and they also operate into New England. I do not think they have any terminals in New England. I do not think they have a terminal in Atlanta. And I think that Day's Motor Lines operates from Atlanta into New England. But they would not be considered large companies. Carolina Freight Carriers approaches to some extent the size of Akers Motor Lines but they do not have the terminals that we have.

Q. Do you know anything concerning the operations of Roadway Express?

A. Only generally.

Q. Can you state what the operations are concerned in your territory, if you know?

A. Well, as far as our company is concerned, Roadway in our territory takes north, I think, cigarettes out of Winston-Salem, although they do haul commodities generally, and coming south they haul, I think, rugs and commodities generally. They are in competition.

Q. Do you know whether that is the same company as Roadway Express which operates out of Akron and has considerable coverage out in the middle west as far as Texas?

A. Well, I do not know how far west it goes, but I understand it operates in Atlanta and has its headquarters in Akron.

Q. What have you to say regarding the comparative growing power in the New England territory of Massachusetts, Connecticut, and Rhode Island of the combination of Consolidated 1434 and McCarthy as compared with other local carriers in that region?

A. Well, to my knowledge, on freight within New England exclusively, not operating into New York, I do not know of any carrier there that has the coverage that McCarthy has; and as far as companies operating into New York from the New England territory, I do not know of any carrier that has as wide a coverage as Consolidated.

Q. What effect, if any, do you think that would have on business originating in that territory, or freight originating in that territory, destined for points outside of that territory to have these two large local carriers in this merger?

A. Well, I don't know that I could—I would want to make any statement as to that. Of course, my idea is, as I say, I just base what I say on our particular dealings with carriers in New England, and I know from my experience that we have not found any carrier operating out of New York that does have as wide a coverage as Consolidated, and I would say that we have had to turn over freight to Consolidated for that reason. The reason it has been brought to my attention so vividly is because we have had to turn over freight to Consolidated that we would have preferred to turn over to some other carrier, because of the fact that in numerous instances we have secured routing of freight out of New England that Consolidated had, that was routed Consolidated care of

Akers, which we in turn did not enjoy, but it was turned over to Horton Motor Lines in New York. Even in view of that fact we still in some instances would have to turn over freight to Consolidated, because of their coverage.

Mr. MACDONALD. That is all I have, Mr. Examiner.

By Mr. SULLIVAN:

Q. You are in competition with Consolidated on north-south business; is that a fact?

A. Yes.

Q. Notwithstanding that fact, they have been agreeable in the past making connections with you?

A. That is correct.

Q. And you have had the means at your disposal from the fact of your Consolidated connection to ascertain the sources from which they obtain freight, have you not?

A. The only freight that Consolidated has ever turned over to us has been freight that our solicitors in the south have secured and the freight has been routed Consolidated care of Akers. We have never had any freight turned over to us, to my knowledge, that was unrouted freight that Consolidated turned over to us; therefore we would not have had any knowledge as to any of their freight.

Q. Well, just so we will be talking about the same thing from now on, when you use the expression "to my knowledge" you mean so far as you know, is that it?

A. That is right.

1436 Q. I want to be sure I do not misunderstand you. Now, do you give Consolidated the most freight, or do they give you the most freight?

A. Well, I would say that the freight that we presently interchange with Consolidated is of such a small amount that it would be very difficult for me to say whether we give them more than they give us other than—that is, that we turn over to them and they turn over to us—other than this, that any freight that is interchanged between Akers and Consolidated is freight that Akers gives to Consolidated, because any freight that they give us is not given to us but is routed by our solicitors that way. Freight that we give Consolidated is not freight that is routed Akers-Consolidated, but is unrouted freight which we find expedient to give to Consolidated because of their coverage.

By MR. JOSELOFF:

Q. Are there any points in New England to which Consolidated is the only means of getting that freight?

A. I couldn't tell you.

By MR. SULLIVAN:

Q. I gather, then, what you want us to understand from previous testimony we had along that line is that at the moment you have never made an investigation to find out if there were any other means of getting freight to New England points?

A. Yes; we have an interchange department that works on that particular matter, and I feel that they have made a pretty thorough check on that, and apparently because of either the 1437 coverage or because other lines do operate into New England out of New York that do not participate in the through rates, why, for either one of the two reasons the freight has been given to Consolidated.

Q. Do you exchange with Seaboard?

A. Yes.

Q. Extensively?

A. No; I would not say extensively.

Q. Any particular reason why you do not?

A. Not at all, other than, as I say, we do not interchange extensively, I will say, with any carrier.

Q. Do you exchange with New England Transportation?

A. To a very slight degree.

Q. Any reason why you do not exchange to any greater degree?

A. Not at all.

Q. Do you interchange with Adley?

A. Maybe a few shipments.

Q. Any reason why you do not exchange to a greater degree?

A. Not at all.

Q. As I understand your testimony, so far as freight moving north-south and New England is concerned, for points outside

of New England, Consolidated has the best coverage of any one carrier and the most business, is that it?

A. From my knowledge, that is correct.

Q. There isn't anything about McCarthy's operation that  
1438 would materially add to the coverage or the service of Consolidated so far as north-south freight is concerned, is there?

A. Well, I am not familiar with all the points that Consolidated covers and all the points that McCarthy covers as to exactly which one covers what territory. I would not be in position to answer that.

Q. Well, isn't this generally the situation: McCarthy is a carrier who is concentrated on local or intra-New England business, except for east-west movements into New York City?

A. That is my knowledge.

Q. And that Consolidated has a more concentrated north-south movement into the south, Philadelphia and the like, so far as their business is concerned?

A. That is my understanding.

Q. Now, you spoke of the trading power or the swapping arrangement, which was referred to here. Take the situation down in Georgia, where small intrastate lines also handle interstate commerce. Do you think in practice two or three companies together would have any more trading power than two or three companies working individually with that carrier? I am not talking about theory; I am talking about practice. You are a practical truck operator.

A. Well, I would think so. I would think that one person, or one concern controlling the traffic that had an original movement, say, by three concerns, that that volume of traffic—  
1439 the person controlling that traffic would be in a much better bargaining power.

Q. It is theory, isn't it? Let me ask you in practice if this would not be the situation: Assume any point. I picked the State of Georgia because somebody happened to talk about it, too many intrastate carriers running around. Now, assume that at Atlanta there were three large carriers all running up towards the north, and all coming in there, and being required by the nature of the situation to exchange freight with this carrier, we will call X, who had pretty good coverage in Georgia, and the only coverage. So the three carriers are doing the best they can to chisel the return freight. They have got no choice. Now, coming south they each try to get the most for their line, don't they?

A. That is correct.

Q. Now, then, assume that there was also a fourth carrier doing the same thing, but these three then get together. Don't you think that the fourth carrier coming in there wants these three together to do as well as they did before, maybe a little better?

A. Well, I don't think so.

Q. All right. All of these carriers have no other recourse than to use this carrier X in the State of Georgia, have they?

A. That is right.

Q. So what difference does it make to that carrier in the  
1440 State of Georgia as to who he gives the freight to going south? They all have got to use his line going south, don't they?

A. That is true.

Q. So what difference does it make who he gives it to?

A. Well, you might take that attitude, but that is not the attitude, I don't think, that you will find a carrier takes.

Q. You used to have four fellows, and now you are going to have only two fellows. Wouldn't you be more apt to divide fifty-fifty than you would if you had four?

A. Not if one is giving me ten or twenty times more freight.

Q. He can't take it away from you, can he?

A. Well, he may not be able to take it away from me, but he always has this to consider: He never knows but that maybe some other line can be started to compete with him.

Q. Well, that would be the answer to any of the situations we come up against

A. That is right.

Q. It might depend on which of the two guys played the best golf, and so on. Wouldn't that be about the way it would work out?

A. Well, I don't think so.

Q. Do you solicit freight business yourself?

A. I do not.

Q. Well, so far as you are concerned, you do not feel you have anything in particular to worry about as to whether this  
1441 proposed merger is approved or not; you do not think it will affect your company particularly one way or the other.

A. Well, as far as the business that we are now handling, I think it would have very little effect on the company.

MR. SULLIVAN. That is all.

Exam. BAKER. Any redirect?

Mr. Akers, in connection with this custom of swapping freight, is it the custom for a particular carrier to deliver freight to other carriers somewhat in proportion to the total volume that they would deliver to him? Is that the custom?

The WITNESS. No; I would not say that it would be as much as that. I mean it would not be that carrier is going to do business with four or five, that he would try to divide his freight among four or five in proportion that they give freight to him, although he would work with the various carriers that work with him. In all probability the carrier that has the most freight to give that person—I mean carrier, short-line carrier, would probably get more maybe than his share on a percentage basis of the unrouted freight that that short-line might have.

Exam. BAKER. Do you find any tendency among shippers to divide freight among competitors? Suppose there are two lines serving between particular points. Do you find that shippers prefer to divide their freight among competing lines rather  
1442 than give all of their freight to those points to one line?

The WITNESS. I will say that there are a few carriers that do purposely divide their freight among several carriers.

Exam. BAKER. I do not mean carriers now; shippers.

The WITNESS. A few shippers that do divide their haulage business among several carriers. That is their policy—not to let all their freight be handled by one carrier. But I will say that would be the exception rather than the rule, that a shipper would usually give his freight to one carrier going to a certain point. In other words, a carrier, say, from Charlotte shipping freight to New York would probably give all that freight going to New York to one carrier, if it was in his jurisdiction to give it to a carrier. In some instances he would not have a choice in that. Maybe the consignee had requested the freight to be shipped to New York by a certain line, and he might have a good many requests, so that he would have to ship by several competing carriers. But if he had his choice, and those that do have the control of the routing usually ship to one particular city by one line.

Exam. BAKER. From a competitive standpoint, on traffic moving, say, from the south to New York City, as I understand it presently you are in competition with Horton and Barnwell.

The WITNESS. That is correct.

Exam. BAKER. If this transaction were consummated and the operations merged, instead of Horton and Barnwell, two  
1443 competitors, you would have Associated Transport Company, one competitor, in their stead. Do you feel that you would be any worse off or better off from the change in the number of competitors?

The WITNESS. Well, I feel, to be frank, that so far as the solicitation is concerned that we would be better off if the combine were approved, because instead of having our solicitors to have to compete with two solicitors, they would have to compete

with one solicitor, because all solicitors have their friends that give them business, so instead of having two men that have friends, why, they would have just one man. So, so far as solicitation is concerned on freight, as an example from the south into New York, solicitation in that respect is concerned, why, we would be better off.

Now, as far as freight originating in the south going into New England, that would be different, because at the present time we have a service to offer that neither Horton nor Barnwell can offer in that we can give direct service from the south into New England, which they cannot give; but when the combine goes through, of course, they would have that service. So, as far as we are concerned, as I stated a little while ago, as far as our company is concerned, so far as freight that we are now handling or the potential freight that we will handle in the future, we are not perturbed about it.

Exam. BAKER. Thank you, Mr. Akers.

1444 (Witness excused.)

Mr. SULLIVAN. I just want to ask him one more question, if I may.

Exam. BAKER. Very well.

By Mr. SULLIVAN:

Q. Do you have a monopoly on that service from the south into New England?

A. Not at all.

Q. Are there other carriers that give such service?

A. I do not think any other carrier gives as good a service.

Q. You can get a monopoly of good service, but seriously there are a considerable number of carriers offering a service which at least holds itself out to be of the same sort that you offer from the south into New England?

A. I would say no; for this reason, that I think we are the only carrier that operates from the south into New England that maintains offices in New England to contact the shipper or receiver about their freight, and so forth. We offer a service there that I do not think any of the other lines operating from the south into New England offer.

Q. I was not speaking of the quality of the service.

A. Yes.

Q. But there are other carriers, and if they decide to put a terminal in New England they would have exactly the same service.

A. That is correct.

1445 Q. You also cover some New York State points, do you?

A. That is correct.

Q. How extensive is your right of operation in New York?  
I do not mean technically in that sense; I mean what coverage.

A. It is rather broad.

Q. You cover substantially all of New York State, do you not?

A. That is correct.

Q. And you have not gotten to the point of setting up a string of terminals there.

A. That is right.

Mr. SULLIVAN. It won't be long now. O. k.

(Witness excused.)

Mr. MILLER. Mr. Examiner, I have two more witnesses who are unavailable at the present time. There is a possibility they will get in some time this afternoon, but in that event they will have to interrupt the proceeding at that time, and counsel for the applicant has agreed to stipulate that the testimony of these two witnesses will be substantially the same as that offered by Mr.—

Mr. SULLIVAN. Smith, Lewis, and Akers.

Mr. MILLER. Smith, Lewis, and Akers with reference to the swapping of freight and interchange with competitors.

Mr. SULLIVAN. I presume that means their entire testimony, including direct and cross?

1446 Mr. MILLER. Yes.

Exam. BAKER. Is that agreeable to the other intervenors?

Mr. MACDONALD. May we inquire what lines are represented by those witnesses?

Mr. MILLER. Mr. Harris, of Harris Brothers Transfer Company, Inc., and Mr. W. W. Miller, Jr., doing business as Miller Motor Express.

Mr. MACDONALD. Mr. Examiner, because there are different fact situations concerning each one of those carriers, we do not feel that this particular evidence would have any particular bearing; consequently the stipulation will have no value in the record; consequently we do not think we would approve the stipulation.

Mr. SULLIVAN. Consequently you object.

Mr. WILFRED. Mr. Examiner, may I add to what my associate counsel said, there is also the amount of interchange involved, and it could not be testified that the amount of interchange would be the same as that that any of the other witnesses mentioned. Obviously it would be impossible to stipulate that it would be the same as the other carriers. The circumstances are entirely different.

Exam. BAKER. I believe each of the other carriers stated that the amount of interchange was not substantial with the carriers here involved.

Mr. MILLER. I only wanted to stipulate that the testimony with reference to the swapping of freight and interchange with competitors would be substantially the same as that offered by Mr. Lewis, Mr. Smith, and Mr. Akers.

Exam. BAKER. In view of the objection, the stipulation will not be noted. In view of the objection, Mr. Miller, do you propose subsequently to introduce these witnesses?

Mr. MILLER. I cannot give you a definite answer at this time, because I do not know just when they are going to arrive here, but I will be able to let you know this afternoon definitely.

Exam. BAKER. Mr. Glynn, does the organization you represent propose to introduce any evidence?

Mr. GLYNN. Well, now, I do not have a definite answer on that at this time. I communicated with Mr. Tobin this morning and advised him that if evidence is to be presented that it would be necessary to present it the first thing this afternoon, and he was not able to tell me at that time positively whether there would be a witness or not.

Exam. BAKER. Suppose we take a recess for lunch at this time until 1:30. At that time, if it is possible, if your organization proposes to introduce testimony, would be the most convenient time for the introduction of that testimony. And will the Department of Justice be prepared at that time, in case other evidence is not offered, to proceed with its case?

Mr. WIPRUD. We will, Mr. Examiner.

Exam. BAKER. Very well. We will recess until 1:30.

(Whereupon, at 12:05 p. m., September 9, 1939, a recess was taken until 1:30 p. m. of the same day.)

1449

AFTERNOON SESSION 1:30 P. M.

Exam. BAKER. Come to order. Mr. Glynn, can you make any more definite statement now as to whether you will put in any evidence?

Mr. GLYNN. Mr. Examiner, it has been very difficult to get in touch with Mr. Tobin and Mr. O'Brien, due to the fact that he is engaged in other pressing activities, this Wage & Hour Hearing, and we are not prepared at this time to put on any evidence, but we reserve the right to do so at a later stage after the Department of Justice is through.

Exam. BAKER. Very well. You may proceed, Mr. Macdonald.

Mr. MACDONALD. I call Mr. Berquist.

F. E. BERQUIST, being first duly sworn, testified as follows:

Direct examination by Mr. MACDONALD:

Q. Will you state your name and address, please?

A. F. E. Berquist, Bethesda, Maryland.

Q. What position do you hold?

A. Special assistant to the Attorney General.

Q. How long have you been with the Department of Justice?

A. Three years.

Q. What are your duties in that connection?

A. My duties are in the field of statistical and economical  
1450 research.

Q. What are your educational qualifications?

A. A. B. and M. A. degrees from the University of Washington. I have done two years of graduate work at the Brookings Graduate School, Washington, D. C.

Q. What has been your experience since the time you graduated or finished your graduate work at the Brookings Graduate School?

A. For three years I was on the faculty of the Carnegie Institute of Technology at Pittsburgh, and since 1929—that is, from 1926 to 1929—at Carnegie Tech, and since that time, with the exception of one year, I have been engaged in various Governmental agencies in Washington, D. C., including the Census Bureau, the Bureau of Mines, the N. R. A., and the Department of Justice.

Q. Have you ever engaged in research relating to the transportation industry?

A. In connection with the Retail Solid Fuel Industry, I have had charge of cost studies for the trucking of coal from mines to many consuming centers; and in connection with my work with the Department of Justice I made quite extensive studies in the transportation of petroleum and its products by pipe line and rail.

Q. Are you familiar with the application in this proceeding contained in Docket's MC-F-1612 and MC-F-1613?

1451 A. I am.

Q. Have you had occasion to examine the Commission's files to determine the routes and other data concerning the operations of the companies concerned in the application?

A. I have.

Mr. MACDONALD. At this time I would like to have marked for identification a map entitled "Composite Route Map of Motor Truck Lines Parties to the Merger Application of Associated Transport, Inc., in Docket's MC-F-1612 and 1613."

Exam. BYKER. The document described will be marked for identification as "Intervenor's Exhibit No. 21."

Exhibit No. 21, Witness Berquist, marked for identification.

By Mr. MACDONALD:

Q. Showing you Exhibit marked, for identification, No. 21," will you state what it is?

A. It is a map of the eastern part of the United States showing a composite of the routes of the eight companies concerned in the merger. It was made from the individual maps of each of the eight companies contained in the application of Transport, Inc., in Docket MC-F-1223 and related docket numbers. Duplications, of course, are not indicated here, this map showing only the routes traveled, whether by one or more carriers.

Mr. MACDONALD. Off the record for a minute.

(Discussion off the record.)

1452 Exam. BAKER. Back on the record.

By Mr. MACDONALD:

Q. Was this exhibit prepared under your supervision and direction?

A. Yes.

Q. Is it an accurate portrayal of the routes shown on the maps contained in the dockets referred to?

A. It is.

Mr. MACDONALD. At this time, Mr. Examiner, I would like to offer an opportunity to the applicant and other intervenors to cross-examine on this exhibit, since at this time I would like to offer it in evidence.

Exam. BAKER. Cross-examination.

Voir dire examination by Mr. SULLIVAN:

Q. Do I understand, Mr. Berquist, that this Exhibit 21 is taken from maps filed in the former case, known as MC-F-1223 and related numbers?

A. Yes.

Q. Did you make any investigation to determine what action, if any, the Commission had taken since that time with respect to any of the routes of any of the companies who might have submitted maps in conjunction with that application?

A. This map is a composite of those which appear in that docket and without any subsequent corrections or additions or changes.

Q. You do not know what the status of the certificates  
1453 of the various companies involved in this proposed unification is at this time?

A. I do not.

Q. Have you any supplemental data there with you which would enable you, if it should become important as we go along, to indi-

cate which lines are the lines of the respective companies involved in this application?

A. Well, I have considerable data taken from the reports of the Commission which indicate the routes as of the end of 1940.

Q. Have you compared that data with the routes as they are shown on this map?

A. This map is a composite of the routes shown on the maps, as I testified.

Q. Well, you would not be able to indicate the routes of particular companies as they are shown on this Exhibit 21? I mean as opposed to the overall picture.

Mr. MACDONALD. I think the applicants have already put that in evidence in their own application.

Mr. SULLIVAN. Well, I withdraw that question and put it to you this way:

By Mr. SULLIVAN:

Q. Have you compared this map with the maps that have been put in evidence in this application?

A. This map is based upon the maps in Docket 1223.

Q. Why did you use Docket 1223 instead of using the maps in this application.

1454 A. They seemed to be the most readily available and seemed to be the basis for a composite map.

Q. Well, a composite map—

Mr. MACDONALD. Mr. Examiner, there were no maps in this application except the one which applicant has shown, and on that map there is indicated nothing but a grouping of the most important routes traveled. They offered no exhibit showing the detailed routes traveled, so there was no basis for comparison; therefore that question assumes a fact that is not true.

Mr. SULLIVAN. I just asked him why he did not use it.

Mr. MACDONALD. There was nothing to use.

Exam. BAKER. Proceed.

Mr. SULLIVAN. That is all the questions I have, and I stipulate that counsel may continue leading the witness, even though it is direct.

Exam. BAKER. Any more cross-examination?

Any objection to the receipt of the document in evidence?

Mr. SULLIVAN. No; I have no objection.

Exam. BAKER. Exhibit No. 21 will be received in evidence.  
(Exhibit No. 21, Witness Berquist, received in evidence.)

Direct examination (continued) by Mr. MACDONALD:

Q. In connection with your investigation of the Associated Transport application, have you made or caused to be made

1455 under your direction and control an analysis of the operations of carriers listed in applicant's Exhibits 2, 3, and 4, relating to the existence of competition in the areas concerned?

A. Yes; I have.

Q. What source or sources of information did you use?

A. Primarily we used the annual reports of motor carriers filed with the Commission pursuant to its requirements. These reports were for the year 1940. In addition, in some cases, we examined the dockets containing the applications of the carriers and other materials in the docket files of the Commission.

Q. You refer to the applications of the other carriers?

A. Yes.

Q. Were all of the carriers listed on applicant's Exhibits found to be Class 1 carriers?

A. No.

Q. How many carriers were there altogether, and how many were Class 1 out of Exhibits 2, 3, and 4?

A. Of the 399 carriers in applicant's Exhibits 2, 3, and 4, there were 144 determined to be Class 1 carriers.

Q. Did you cause any examination to be made of the carriers which were shown not to be Class 1 carriers, and, if so, what did this investigation show?

A. We sampled a cross-section of non-Class 1 carriers to see what the nature of their operations was. We found that 1456 practically all were of a limited local nature or else special commodity carriers. For example, the Albany Highway Express made application for a certificate (MC 25296), describing its business as pick-up and delivery service within 20 miles of Albany. This application was eventually dismissed.

The American Freightways Company application lists, as of September 1940, 5 units of equipment operating in a territory involving 6 states, New York, Pennsylvania, New Jersey, Connecticut, Rhode Island, and Massachusetts; MC 26001 and MC 13423.

The Mohawk Valley Transportation Company of Utica, New York, was shown to be a hauler of beverages only on one route and linoleum on another, with limited rights as to other named commodities. This company operates 6 units (MC 22325 and subs).

Fairclough Express, a contract carrier of packing house products between Buffalo and western Pennsylvania points, using ten trucks, had its application denied (August 6, 1938, MC 62516 and sub).

Heimerl Trucking Corporation, although classed as a contract carrier of general commodities, was shown to be mainly a special commodity hauler of malt beverages and empty containers from

and to New Castle, Pennsylvania, to Buffalo, New York. This company had two units engaged in this business and three in local New York State operations.

1457 Q. Returning to the Class 1 carriers and referring to applicant's Exhibit number 2, what were your general findings as to the operations of these carriers?

A. Exhibit 2 listed 169 carriers. Of this number 37 were found to be Class 1 carriers. On a limited number no annual report or docket was available. Of the 37 Class 1 carriers found 30 were found to be regular route carriers, giving scheduled or nonscheduled service, while 7 were shown to be irregular route carriers.

Mr. MACDONALD. I would like to have marked for identification a document consisting of two pages entitled "Compilation of Gross Intercity Revenues of Class 1 Carriers Included in Applicant's Exhibit 2" on page 1, and "Grouping of Class 1 Carriers by Size of Gross Revenue 1940" on the second page.

Exam. BAKER. The document described will be marked for identification as "Intervenor's Exhibit No. 22."

(Exhibit No. 22, Witness Berquist, marked for identification.)

By Mr. MACDONALD:

Q. Showing you Exhibit marked for identification No. 22, will you state what it is?

A. It consists of a list of the Class 1 carriers from applicant's Exhibit No. 2, with the gross operating revenue of each as taken from their 1940 annual reports to the Commission, together with a chart showing a grouping of these carriers based upon size  
1458 as measured by gross operating revenues.

Q. So far as page 1 of the exhibit is concerned, have you any additional explanation to make?

A. I think that page speaks for itself.

Q. On page 2 there are certain numbers, 0 through 30, across the top of the chart. What do they refer to?

A. That just represents a scale which indicates a measurement of the number of carriers as measured by the bars in the left-hand side.

Q. Running vertically from the top to the bottom?

A. That is right. Apparently this scale is a little more than is needed.

Q. And the figures in the left-hand column?

A. They represent the size groups. Thus, the figures 1,000,000 to 2,000,000 would be those carriers that fall within that grouping in terms of gross annual revenue in 1940.

Q. For example, referring to the bracket 200,000 to 300,000, what would that indicate? What would the bar extending into the chart indicate in that case?

A. The bar would indicate there were 9 in that group.

Q. Nine Class 1 carriers?

A. Nine Class 1 carriers of that size.

Q. Was this exhibit prepared under your supervision and control?

A. It was.

1459 Q. Does it correctly portray the facts shown therein?

A. It does.

Mr. MACDONALD. I offer in evidence intervenor's Exhibit No. 22.

Mr. SULLIVAN. No objection.

Exam. BAKER. Exhibit No. 22 will be received in evidence.

(Exhibit No. 22, Witness Berquist, received in evidence.)

By Mr. MACDONALD:

Q. Referring to applicant's Exhibit B-6 contained in the application, what do you find the gross operating revenue of the Horton Motor Lines to be for the year 1940?

A. \$4,250,093.69.

Q. Of the Barnwell Brothers Company?

A. \$2,066,670.71.

Q. And if you add Southeastern to these other two, what will the total be?

A. It will be \$6,747,558.43.

Q. Referring to Exhibit No. 22, Mr. Berquist, how many carriers do you find, if any, with gross revenue equalling that of the Horton Motor Lines?

A. None.

Q. Of the Barnwell Brothers Company?

A. None.

Q. Then, a merger of Barnwell and Horton is a merger of 1460 the two largest companies operating in this territory, is it not?

A. Yes; it is.

Q. And that is assuming, is it not, that all of these lines are competitive with the three consolidating companies?

A. Yes.

Q. What has your examination shown as to the actual existence of competition between each of the carriers listed on the exhibit and carriers of the proposed merger operating in this territory?

A. They are by no means all competitive with members of the proposed consolidation.

Q. Will you summarize briefly what the records of the Commission show as to the operations of each of the companies on Exhibit 22 in their relation to the operations of the members of the proposed merger?

A. Starting with the largest and considering the service from North Carolina points into Metropolitan-New York, Mason Dixon Lines, Inc., is the largest and is competitive. Brooks is also competitive. Great Southern is not. This carrier operates through great areas in Florida, Georgia, and Alabama and has a northwest route from Atlanta into Tennessee. It is competitive in the western area of North Carolina but does not extend north of Winston-Salem.

Broadway Express, Inc., is primarily a middlewest carrier with routes extending from Ohio points east and south. 1461 It also has a route from New York to Winston-Salem. The commodities it handles are limited. It used to be largely tires and now includes cigarettes. All of their equipment except a small part just acquired with the purchase of another line is leased.

Akers Motor Lines, Inc., is principally a long-haul carrier from the south to the Metropolitan New York area with some service to Boston. This line is competitive.

Atlantic States Motor Freight Line covers the Greensboro to New York route, but much of its local business in the south is drawn from eastern North Carolina and South Carolina, where lines concerned in the unification do not operate.

The East Tennessee and Western North Carolina Motor Transportation Company, as its name implies, is largely an east-west operation and has considerable contract operations in addition to its common-carrier service. I would say that this company is substantially not competitive locally and, of course, is not concerned in the North Carolina to New York movement at all.

The Baltimore Transfer Company of Baltimore City runs from Petersburg, Virginia, in the vicinity of Richmond, to New York. It is not competitive with lines in the unification for business originating south of Petersburg except on an exchange basis. It is competitive with regard to business originating in the Richmond area.

1462 New South Express Line Inc., operates in North Carolina, South Carolina, and Georgia. Its only competitive routes are from Atlanta to Charlotte, and from Greenville, South Carolina, to Asheville. It is essentially a feeder line for Barnwell and Horton at Charlotte rather than a competitor. It is not engaged in the North Carolina to New York movement.

The Rutherford Freight Lines, Inc., is another east-west operation, running from Richmond to Chattanooga and also from Rock Hill, South Carolina, to Bristol, with service between some points in North Carolina and Virginia. This line is essentially a feeder and distributor for lines concerned in the unification rather than a competitor. It has a trailer interchange with Barnwell at Lynchburg, the need for which will be eliminated by the proposed merger insofar as overlapping routes are concerned.

Novick Transfer Company operates from Roanoke to New York City but does not enter North Carolina. It is competitive, then, from Roanoke but not for North Carolina business except on an interchange basis. It is largely a rayon carrier from Waynesboro, Virginia.

Horlacker Delivery Service, Inc., should not have been included in the exhibit, as it is shown to be substantially a merchandise distributor only, being a special carrier of films and related supplies, publications, and Fleischmann's Yeast. It operates from Virginia into Pennsylvania and New Jersey.

1463 Overnight Motor Transport Company operates from Alexandria, Virginia, to New York City. It is, then, not in competition for southern Virginia and North Carolina business. It is competitive with Barnwell and Horton for business originating in the Washington area consigned to the New York area.

The Transport Corporation of Virginia has irregular routes only and has been determined to be largely a tobacco hauler.

Harris Brothers Transfer Company has applied for rights covering most of the Charlotte to New York routes. This application is still pending, I understand, so that if any of the claimed routes are denied, it may not be competitive on all of these routes.

Mundy Motor Lines is in competition on the Charlotte to New York run but has little local service in North Carolina. It also operates from Bristol north in competition with Southeastern. It is largely a rayon carrier outbound from Roanoke but carries general freight inbound.

Super Service Motor Freight Company operates from Tennessee to Philadelphia, serving local points in southeastern Tennessee and has an interchange of equipment from Philadelphia to New York. It is, then, a Southeastern competitor.

Miller Motor Express Company is essentially a long-haul carrier from Atlanta to Philadelphia by way of Charlotte and Richmond, with branches to Columbia, South Carolina, and

1464 Wilmington, North Carolina. I understand that it recently bought the Wright Line serving locally in the

Washington area. It is in competition with the unified lines over this long route but draws business from some areas not served by members of the unification.

Preston Trucking Company, Inc., runs from Charlotte and Raleigh to Boston, according to its application, upon which no certificate has yet been issued. My information is that it has no actual operations south of Richmond.

Central Motor Lines, Inc., has irregular routes only, operating out of Kannapolis, North Carolina. Its out bound business is largely confined to products of the Cannon Mills.

Of the seventeen remaining smaller companies, the only general commodity carrier with an established route north from the Carolina area into the Metropolitan New York-area is Red Line, Inc., which is substantially a mover of household goods, office and storage equipment, and articles requiring special handling. It operates twenty-one units.

Five of these smaller companies operate from Virginia points north. These are Cochrane Transportation Company, operating ten units; East Coast Freight Lines, from Richmond north; Atlantic Coast Freight Lines, Inc., from Richmond to New York; Colonial Motor Freight Line operates from High Point via Richmond to Baltimore, and is largely a furniture carrier. R. C. 1465 Motor Lines, Inc., operates from Jacksonville, Florida, via

High Point and Greensboro to Baltimore. It also operates from Jacksonville to Charlotte, North Carolina. The remaining eleven lines operate locally in the Southeastern Atlantic states area over routes in some cases competitive and in some cases not. Several have no regular route operations.

Q. Did you find that some carriers of substantial gross revenue, although certified as common carriers of general commodities, actually engage very largely in special-commodity hauling for large manufacturing concerns?

A. Yes.

MR. SULLIVAN. Excuse me, Mr. Examiner—I beg your pardon.

EXAM. BAKER. In connection with that, I would like to know what you mean by being engaged very largely in hauling particular commodities. How did you determine that?

THE WITNESS. Well, the carriers that haul for Cannon Mills, for example, are tobacco haulers.

EXAM. BAKER. I mean, how did you determine that a particular carrier was engaged very largely in handling tobacco products, or furniture, or whatever the commodity might be? Was it from an examination of the Commission's docket that you determined that he only had operating rights for this commodity, or have you made an investigation?

The WITNESS. In some cases the reports indicate that; and 1466 then, again, I may say, Mr. Examiner, I have had several men working over here and they have gathered certain information, which in some cases I have not seen myself, but they have given it to me as being information that they have gathered in their efforts to get the information that was sought in the files of the Commission.

Mr. SULLIVAN. Well, you have asked substantially what I was going to ask, as to the basis for his statements that a carrier was this kind of a carrier or that kind of carrier. It does not appear that the witness is qualified to give the sort of testimony he is giving and has been giving. I object to it.

Mr. MACDONALD. What part do you object to, may I ask?

Mr. SULLIVAN. The characterization of somebody as being principally a textile hauler, or principally a tobacco hauler, principally this, principally that. It does not appear there is any foundation for an opinion on his part, and we do not know what that is based on.

Mr. MACDONALD. Do you know that the annual report which is submitted to the Commission asks the carriers to specify the type of commodity they carry?

Exam. BAKER. I feel, Mr. Macdonald, in view of the objection, that where Mr. Berquist has occasion to refer to the type of operation he should state at least the source of his information so 1467 that appropriate weight may be given to it. Will you do that in the future.

By Mr. MACDONALD:

Q. Summing up, then, which companies have you found that are in main-line competition from North Carolina and eastern Tennessee points into the Metropolitan New York area with through-route service?

A. The Mason Dixon Lines, Brooks Transportation Company, Roadway Express, Akers Motor Lines, Atlantic States Motor Freight Lines, Harris Brothers Transfer Company, Mundy Motor Lines, Super Service Motor Freight Company, Miller Motor Express Company, Preston Trucking Company, Inc.

Q. What is the combined gross revenue of these ten companies as determined from Exhibit 22?

A. \$8,505,677.72.

Q. Recalling the figure of \$6,747,558.43 as the total operating revenues of Horton, Barnwell, and Southeastern, what have you to say regarding the comparative gross operating revenues of the lines concerned in the application and the north-south operators not concerned in the merger?

A. Recognizing that part of the business at least of the ten companies not in the merger is gained in areas not competitive with territory covered by the merged lines, as is the case, the merger of these three companies results in a consolidation of practically one-half the gross operating revenue of motor carrier traffic over this north-south route.

Mr. SULLIVAN. Mr. Examiner, I object to that conclusion, 1468 unless he specifies more fully how he reached it. In any event, I say it is so incompetent as to be of no probative value, because he measures traffic entirely by the route.

Mr. MACDONALD. Mr. Examiner, I have no objection to an objection, but argument by counsel is interfering with the direct examination.

Exam. BAKER. That conclusion, of course, is subject to argument, Mr. Sullivan, and I believe you have stated the basis of it.

By Mr. MACDONALD:

Q. Mr. Berquist, your conclusion was based, was it not, on the operating revenues of single line north-south haulers?

A. That is correct.

Q. Are you familiar with the application of Transport, Inc., contained in Dockets MC-F-1223, 1244, and 1264, heard about a year ago?

A. Yes; I know something about it.

Q. Have you had occasion to examine certain of the exhibits contained therein, specifically Exhibit No. 35 containing the comparative net profit statement of the companies concerned in that application?

A. Yes; I have.

Q. How many over-the-road companies were listed on that exhibit?

A. Twenty-eight.

Q. What was the total net profit for those companies?

1469 Mr. SULLIVAN. Just a minute. I object.

Exam. BAKER. I do not think that is pertinent, Mr. Macdonald. I do not see the relevancy of it.

Mr. MACDONALD. It is to show the comparative profit of the companies therein concerned as compared with those companies of the total 28 that are in this application herein.

Exam. BAKER. I do not see how it is relevant. The objection is sustained.

By Mr. MACDONALD:

Q. Taking applicant's Exhibit No. 3 pertaining to the lower New England states of Massachusetts, Connecticut, and Rhode Island, how many carriers were listed on that exhibit?

A. 169.

Q. How many did you determine to be Class 1 carriers?

A. 72.

Q. Were there some others upon which no Commission records were available?

A. Yes; there were a few.

Q. What did you find in regard to the general route operations of the Class 1 carriers listed in applicant's Exhibit No. 3?

A. Fifty-nine were shown to be regular route operators. Three were shown to be carriers of special commodities only. Six were shown to be irregular route operators, and four were shown to be giving radial or non-radial service over regular routes.

Q. Have you caused to be prepared an exhibit showing 1470 the comparative gross revenue of these carriers for the year 1940?

A. Yes; I have.

Q. I show you these papers, which I would like marked for identification, entitled "Compilation of gross intercity revenues of Class 1 carriers included in Applicant's Exhibit No. 3" on the first page, with a second page continuing that list, and a third page entitled "Grouping of Class 1 Carriers by Size of Gross Revenue 1940" —

Exam. BAKER. The document described will be marked for identification as intervenor's Exhibit No. 23.

(Exhibit No. 23, Witness Berquist, marked for identification.)

By Mr. MACDONALD:

Q. I show you these papers marked for identification "Intervenor's Exhibit No. 23" and ask you to tell us what it is.

A. It is a list of the Class 1 carriers included in applicant's Exhibit No. 3 with the gross operating revenue of each as taken from their 1940 annual reports to the Commission, together with a chart showing a grouping of these carriers based upon size as measured by gross operating revenues.

Q. Does it accurately show those portions of the Commission's records which it purports to show?

A. Yes; it does.

Q. Is it in essence the same type of exhibit which is in evidence as intervenor's Exhibit No. 22? 7

1471 A. That is correct.

Q. So that the explanation you gave as to intervenor's Exhibit No. 22 also explains this exhibit?

A. Yes; the same thing.

Mr. MACDONALD. I offer in evidence Exhibit marked for identification "No. 23."

**Mr. SULLIVAN.** No objection.

**Exam. BAKER.** Exhibit No. 23 will be received in evidence.  
(Exhibit No. 23, Witness Berquist, received in evidence.)

**By Mr. MACDONALD:**

**Q.** Mr. Berquist, what have you found regarding the operations of each of the carriers shown on Exhibit 23?

**A.** Starting with the largest and going down the list, this is what our study showed: Liberty Motor Freight Lines, Inc., the largest listed, operates between New York City and Boston on the east and Chicago, Illinois, on the west, with service to such points as Pittsburgh, Cleveland, Erie, Albany, and Baltimore. So far as local New England business is concerned, this carrier would not seem to be competitive at all except on the Boston to New York route and perhaps the Albany to New York route. Certainly its large volume is not drawn to any appreciable extent from the area concerned in this exhibit. Adley Express Company—

1472 **Mr. SULLIVAN.** Just a minute. I object to the conclusions of the witness.

**Mr. MACDONALD.** These are conclusions not as to the commodity carried but as to the routes, which is an inference of fact which a statistician is competent to testify to who is experienced in dealing with material of this kind.

**Exam. BAKER.** Well, Mr. Berquist, do you have any data upon which you base your conclusion that a majority of its revenues are not derived from traffic in the New England area?

**The WITNESS.** Only as to a study from the routes given in the annual report, Mr. Examiner, and while they do not indicate the actual tonnage carried, the routes seem to indicate where their coverage is.

**Exam. BAKER.** I suggest that you may develop this matter on cross-examination, Mr. Sullivan. You may proceed.

**The WITNESS.** Adley Express Company is the largest of the lines actually in competition with McCarthy and Consolidated in this area. It runs from Boston to Philadelphia—

**Mr. SULLIVAN.** Mr. Examiner—excuse me. I think in view of the fact that the witness is reading from a prepared statement that he should be instructed to go slower so we would have some sort of chance to keep up with him.

**Exam. BAKER.** Will you please read slower, Mr. Berquist.

**The WITNESS.** Yes, sir.

1473 **Adley Express Company** is the largest of the lines actually in competition with McCarthy and Consolidated in this area. It runs from Boston to Philadelphia over four routes and has in addition regular routes in western Connecticut and

Massachusetts. Except for points on the New York-Philadelphia routes originating from Boston, this carrier shows no feeder routes in the eastern section of this three-state area.

Seaboard Freight Lines, Inc., have a main-line route from Boston to Washington with a service at Baltimore, Philadelphia, New York, New Haven, and Providence. Another route runs from Boston to Worcester to Westfield, Massachusetts, and then up to Albany. Local points are served in Connecticut and in the Hudson River Valley. It is essentially a main-line operation with few feeder lines and it does not serve the northern part of Massachusetts.

New England Transportation Company is substantially a lower New England carrier. It operates in Connecticut, Rhode Island, and in Massachusetts south of a line running from Boston to Worcester to Springfield to Great Barrington. Like Adley, then, it has only partial local coverage.

The M. & M. Transportation Company operates from Boston to Newark to Philadelphia. It is a long-haul carrier and does not enter into the local picture.

**A. Towle Company—**

1474 **MR. SULLIVAN.** Just a minute. I object to the conclusion that it does not enter into the local picture, unless he shows some fact on which he determined that. That goes beyond the question of credibility, I think.

**MR. MACDONALD.** Mr. Examiner, Mr. Berquist has his work sheets on every carrier concerned here, and on cross-examination Mr. Sullivan can bring out what each carrier reported to the Commission in his annual report so far as his operations are concerned. We will be glad to give that type of information to him, but I do think that it goes logically under cross-examination.

**Exam. BAKER.** I feel that is the best way of meeting the situation, Mr. Sullivan. You can bring out the sources of his information on cross-examination.

**Proceed.**

**The WITNESS.** A. Towle Company gives nonscheduled service locally in Massachusetts and Rhode Island and long-haul business to Philadelphia, operating out of Boston. It operates Boston to New York over four routes, giving service to points between, but does not cover Connecticut or western Massachusetts.

Gay's Express, Inc., operates from New York to Albany and from there to points in Vermont. It has one route through central Massachusetts to Hartford. The great bulk of its routes are in Vermont and New Hampshire. This line is not in competition in the three-state area.

Old Colony Forwarding Corp. gives New York scheduled service over one specified route between Boston and New York. It is limited to hauling freight within twenty-five miles of the State House in Boston and in metropolitan New York to the area east of the Hackensack River. It is competitive only with the long-haul business to New York.

Stones Express, Inc., operates from Boston to New York and from Boston to nearby local points. It has contract-carrier business almost equal to its common-carrier business. Its competition is limited almost entirely to the one Boston to New York route.

Hemingway Brothers Interstate Trucking Co. operates over routes local to Rhode Island, nearby Massachusetts points, and southeastern Connecticut, serving Providence, Norwich, and New London, New Bedford, Boston, and Worcester.

St. Johnsbury Trucking Company is entirely limited to Vermont and New Hampshire, except for one route through Boston to Providence.

Capitol Motor Transportation Co., Inc., operates from Boston to Maine and New Hampshire points and also to western Massachusetts, to Providence and to Bridgeport. A considerable portion of its business seems to be drawn from an area not affected by this unification.

A. B. & C. Motor Transportation Co., Inc., has routes from Fitchburg, Massachusetts, to New York City, serving points in eastern and northern Massachusetts and in Rhode Island.

It does not compete in western Massachusetts or Connecticut and is concerned mainly in the long-haul rather than in the local business. H. P. Welch Company—

Mr. JOSELOFF. Would you mind going a little slower, please?

The WITNESS. I am sorry.

Mr. JOSELOFF. If you will repeat the last one—

The WITNESS. I will.

A. B. & C. Motor Transportation Company, Inc., has routes from Fitchburg, Massachusetts, to New York City, serving points in eastern and northern Massachusetts and in Rhode Island. It does not compete in western Massachusetts or Connecticut and is concerned mainly in the long-haul rather than in the local business.

H. P. Welch Company operates from Boston into New Hampshire and Vermont, having one route to New York from New Hampshire. A considerable portion of its business is by contract and it furnishes no competition at all in the territory here concerned.

Shawmut Transportation Company, Inc., operates from Boston and Providence to New York and Philadelphia with service to limited points between. It is not concerned with the local business.

Burgess Express Company, Inc., serves many points in Massachusetts and Rhode Island east of Worcester, Massachusetts, and south of Lowell. It gives local eastern competition.

1447 McFarland & Stampel Trucking Company operates between Newark, New Jersey, and points in lower New England, including New Haven and Wetherfield in Connecticut, Westfield, Holyoke, Boston, and Springfield in Massachusetts, and Providence in Rhode Island. It has no local or feeder routes.

Wm. McCullough Transportation Company, Inc., is an irregular route operator from East Rutherford, New Jersey.

The National Transportation Co., Inc., runs from Perth Amboy, New Jersey, to New York to Bridgeport to Hartford to Willimantic, Connecticut, with return via Meriden and New Haven. It is in local competition in Connecticut only.

M. & R. Transportation Co., Inc., is engaged in long-haul business, giving nonscheduled service between New York and Boston over three regular routes.

Henry Jenkins Transportation Co., Inc., covers many routes in the Massachusetts, Connecticut, and the Rhode Island area. It is competitive with regard to the local business only.

Holmes Transportation Service operates regular and irregular routes from Worcester, Massachusetts, north into New Hampshire. This line is a feeder rather than a competitor.

The H. T. Smith Express Company operates locally in Connecticut with one route from Meriden to Boston.

Darcey Transportation Company, Inc., operates lines locally in Connecticut with further routes forming a triangle to Boston, Providence, and back to Connecticut points.

1478 Lombard Brothers, Incorporated, is an interstate route from Marcus Hook, Pennsylvania, to Northampton, Massachusetts, via Waterbury, Connecticut, with a branch from Waterbury to Pittsfield, Massachusetts. It has some local routes in eastern Pennsylvania, New Jersey, and Connecticut.

J. Coyle operates from Rockport, Massachusetts, to New York via Boston and Springfield. It is a single-route operation not concerned in the local business.

Emmott Valley Transportation Company operates from Uxbridge, Massachusetts, to points in Massachusetts and Connecticut, having several routes to New York from Boston and Uxbridge. It is a competitor locally in eastern Massachusetts and portions of Connecticut.

By MR. MACDONALD:

Q. Of the remaining 46 carriers as shown on Exhibit 23 with operating revenues below \$300,000 annually, are there any with routes that cover substantially all of the Massachusetts, Connecticut, and Rhode Island area?

A. No. Many are irregular-route operators, giving no indication of points served. Others are single-line operators, and most are limited to only a few routes. Several are shown to be single-commodity haulers.

Q. That is, shown in the records of the Commission?

A. That is right.

Q. Summing up, Mr. Berquist, what carriers did you find with coverage in this New England territory equal to that of the 1479 McCarthy Freight System, Inc.?

A. None. The Adley Express Company does not appear to have any extended facilities for services in eastern Massachusetts. The New England Transportation Company misses most of northern and western Massachusetts. Seaboard is substantially a New England to middle states area carrier and does not have extensive local coverage. The M. & M. Transportation Company is largely a shuttle service between concentration points not particularly concerned in extensive local operations.

A. Towle Company does not cover Connecticut on local business. Gay's Express, Inc., is almost entirely in another territory. Old Colony Forwarding Corp. and Stones Express, Inc., like the M. & M. Transportation Company, are concerned almost entirely with the long-haul, single-route movement into the New York area and points south. Hemingway Brothers are largely local in Rhode Island, and the St. Johnsbury Trucking Company is another Vermont and New Hampshire carrier. The routes of Capitol Motor Transportation Company, Inc., are about half and half in this territory and in the New Hampshire territory.

1480 A. B. & C. Motor Transportation Company is not particularly concerned in the western Massachusetts operations. Of the companies in the \$300,000 to \$400,000 bracket, four seem to be engaged in the long-haul Boston to New York movement; two are substantially New Hampshire carriers, serving irregular routes, and the remainder serve only portions of the territory served by McCarthy and by Consolidated in this three-state area.

Q. Turning now to applicant's Exhibit B-6, what does this show as to the operating revenue of the McCarthy Freight System, Inc., for the year 1940?

A. \$1,901,634.04.

MR. SULLIVAN. I do not want to interrupt, but I wonder if he can tell us what part of Exhibit B-6 he takes those from. There are several pages to B-6.

Mr. MACDONALD. The question was directed to applicant's B-6 as indicated in the application in this proceeding, Docket MC-F-1612, Form B. M. C. 45, entitled "Associated Transport, Inc., Summary of Comparative Statement of Income, Profit and Loss, of the Carrier and Noncarrier Companies Included in the I. C. C. Application for the Calendar Years 1939, 1940, and Four Months Ended April 30, 1941, Per Books, and Estimated for the Eight Months May 1 to December 31, 1941."

By Mr. MACDONALD:

Q. Showing you this exhibit, Mr. Berquist, will you indicate which figures you used?

1481 Exam. BAKER. Those things speak for themselves, anyway, in the record, do they not, Mr. Macdonald?

Mr. SULLIVAN. There are several columns, Mr. Examiner, per books, as adjusted, and so forth. I want to know which figure he has taken this from. It could be one of several figures.

Exam. BAKER. Do you refer, Mr. Berquist, to the revenues for the year 1940?

The WITNESS. That is correct. It is shown in the second line in the tabulation under the third column under the general heading of "McCarthy Freight System, Inc., 12 months 1 '41 to 12 '31" and the figure given there is \$1,901,634.04.

Mr. SULLIVAN. All right. Now I know which one he is using, so I can follow him.

Mr. MACDONALD. For my information, is the adjusted figure in the applicant's Exhibit different from the per books figure as to gross operating revenue?

Exam. BAKER. I believe it would be in the case of McCarthy, wouldn't it? The record will show that anyway.

Mr. MACDONALD. Will the Reporter read the last question and answer to refresh the witness' memory as to his place?

(The record was read.)

By Mr. MACDONALD:

Q. And what is the figure for Consolidated Motor Lines, Inc., for the year 1940?

A. \$4,565,539.36.

1482 Q. And the total would be what?

A. \$6,467,173.40.

Q. The record shows that Consolidated conducts 25 percent of its operations in New York rather than in this lower New England territory. What have you to say as to the effect of this on the gross operating revenue figure for Consolidated?

A. Part of the \$4,565,539.36 was secured from territory outside of Massachusetts, Connecticut and Rhode Island.

Q. What has your examination shown regarding the other carriers on this Exhibit No. 23 not included in the merger as to their operations outside of this territory?

A. Four of the five largest competitive carriers operate routes to the Philadelphia or Baltimore areas, naturally securing considerable of their revenues from this long-haul business.

Q. What have you to say, if anything, in regard to a comparison of the gross revenues of McCarthy and Consolidated with the gross revenues of the other competing lines in this area?

A. It would take a combination of the five largest companies, Adley, New England, Seaboard, M. & M., and A. Towle, to equal the gross operating revenues of McCarthy and Consolidated.

Q. What does the record show as to the revenue of McCarthy and Consolidated as compared with the revenues of any individual competitive line operating in this territory?

A. The McCarthy-Consolidated total is three times greater than that of any single company left in the area.

1483 Q. What does your study show, if anything, as to the existence of any other motor carrier having local pick-up and distribution routes in the New England area equal to those of McCarthy and Consolidated and having routes into the North Carolina-Tennessee areas?

A. There are none.

Q. Referring now to applicant's Exhibit No. 4, what were your general findings as to the operations of the carriers shown in this list?

A. Exhibit 4 listed 177 carriers. Of this number, 35 were found to be Class 1 carriers. For a very few, no annual report or docket was available. Of the remaining 35 one was found to be in a local drayage business. Five had irregular route operations, and one was a special carrier of films and accessories.

Q. This is information determined from the files of the Commission?

A. That is correct.

Mr. MACDONALD. At this time I would like to have marked for identification an exhibit entitled on the first page "Compilation of Gross Inter-city Revenues of Class 1 Carriers Included in Applicant's Exhibit No. 4" and on the second page "Grouping of Class 1 Carriers by Size of Gross Revenue 1940."

Exam. BAKER. The document described will be marked for identification as "Intervenor's Exhibit No. 24."

1484 (Exhibit No. 24. Witness Berquist, marked for identification.)

By Mr. MACDONALD:

Q. Showing you Exhibit marked for identification "No. 24," will you state what it is?

A. It consists of a list of the Class 1 Carriers taken from applicant's Exhibit No. 4, together with the gross operating revenue of each as shown in their 1940 annual reports to the Commission, together with a chart showing a grouping of carriers on the basis of size of gross operating revenues.

Q. Where did you secure the information contained in this exhibit?

A. From the files of the Commission.

Q. Was the exhibit prepared under your supervision and direction?

A. It was.

Q. Is it essentially the same type of exhibit as intervenor's Exhibits 22 and 23?

A. It is.

Q. And the description of those exhibits would also serve as a description of this exhibit?

A. That is correct.

Q. Does it correctly portray the facts shown therein?

A. It does.

Mr. MACDONALD. I offer it in evidence.

Mr. SULLIVAN. No objection.

1485 Exam. BAKER. Exhibit No. 24 will be received in evidence.  
(Exhibit No. 24, Witness Berquist, received in evidence.)

By Mr. MACDONALD:

Q. What has your investigation shown as to the actual existence of competition between each of the carriers shown on the exhibit and carriers of the proposed merger?

A. Some of the carriers are shown not to be competitive at all and others only in part.

Q. Will you summarize briefly what the records of the Commission show as to the operations of each of the carriers shown in the exhibit in their relation to the operations of members of the proposed merger?

A. Interstate Motor Freight System is a very large general freight carrier blanketing Illinois, Michigan, Wisconsin, and Ohio. In addition it has routes into the east mainly from Ohio originating points. Insofar as its west to east movements through western Pennsylvania into New York, Philadelphia, and Baltimore destinations are concerned, its routes are not competitive. In two local areas, it is competitive. One area is the western New York area involving several of the principal cities. The other area

includes three routes from Boston to near-by New England destinations. In addition, it has routes from New York to Albany and Buffalo and to Washington.

1486 Insofar as the Moran territory is concerned, this line is competitive in the western New York points, but the bulk of its business obviously is carried on throughout the remainder of its very large system, embracing the states of Illinois, Michigan, Wisconsin, and Ohio. Essentially, this is an east-west carrier and is complimentary rather than competitive to the system which would be set up by the proposed merger.

Keeshin Motor Express Company, Inc.: It is not necessary to go extensively into the operations of this company. Three-fourths of its routes are in territory not concerned in this application. It does have routes competitive with those of members of the merger contained in the area between Buffalo, Syracuse, Binghamton, and Albany. Here again is a large east-west carrier having some overlapping of routes with carriers concerned in the application.

Midwest Haulers, Inc., operate out of Cleveland, Ohio, for points in Michigan, New York, Pennsylvania, Massachusetts, and Ohio. It is competitive between Cleveland and Erie and Cleveland and Buffalo, Rochester, and Syracuse. Its operation from Cleveland to Boston is also competitive. It has additional lines from Baltimore north to western New York points and from Baltimore to Philadelphia to Springfield, Massachusetts. These competitive routes amount to about one-third of the total routes listed for this company.

Q. Mr. Berquist, you might proceed a little more slowly  
1487 to give the gentlemen a chance to follow you.

A. I am sorry. I did not mean to, I assure you.

Mr. SULLIVAN. What do you mean, give us a chance or read so fast?

The WITNESS. Read so fast. I was not conscious of it.

A. (Continuing.) Trans-American Freight Lines, Inc., operates between points in Michigan, Illinois, Ohio, Missouri, and Indiana. In addition it has lines for Detroit to Pittsburgh, from Cleveland to New York City, and from Cincinnati to Buffalo. None of these routes is competitive.

Motor Express, Inc., covers eastern Ohio and western Pennsylvania with routes from Toledo to Buffalo and from Cleveland and Erie to Wheeling and Pittsburgh. These two companies, then, Trans-American Freight Lines, Inc., and Motor Express, Inc., should not have been inserted into applicant's Exhibit No. 40.

Spector Motor Service, Inc., has five main routes from mid-western points of St. Louis, Kansas City, Illinois and Chicago to eastern terminals at New York, Philadelphia and Boston. Eastern

branch routes in the territory here concerned run from Harrisburg to Baltimore, Albany to New York, and between a limited number of towns in western Massachusetts and Connecticut, with one route from New Haven to Boston. \*So far as Moran territory is concerned, no local routes in western New York were listed.

1488. W. T. Cowan, Inc., operates from Alexandria, Virginia, to Baltimore and Philadelphia, with routes running from these points to Scranton, Binghamton, and New York. It is a feeder line to New York territory rather than a competitor with New York operators.

The Western Express Company operates from Cincinnati, Toledo, and Cleveland to western New York cities and between some of those New York points. Except for business originating in the lower Ohio territory, it is competitive.

Lyons Transportation Company has one route from Akron to New York by way of Cleveland and Buffalo with an off route from Buffalo to Niagara Falls. It has special commodity authorization for some New York, Ohio, and Pennsylvania routes, limited to petroleum products and iron and steel products.

York-Buffalo Motor Express, Inc., operates from Philadelphia; Baltimore; York, Pennsylvania; Harrisburg, Lancaster, Pennsylvania; Reading, Pennsylvania; and Williamsport, Pennsylvania, to Buffalo, Rochester, Syracuse, and Niagara Falls. With respect to Moran's traffic from New York points south into Sunbury, this is competitive, but the Moran lines do not extend into the Philadelphia, Baltimore, York, Harrisburg, Lancaster area. Merger of the lines concerned in the application will make this operation substantially competitive.

Niagara Motor Express, Inc., operates from Buffalo to 1489 Albany, serving points in between.

A. & B. Fast Freight, Inc., is another Ohio carrier operating in a few limited areas in the territory here under consideration. These are the western New York area and territory near to York, Pennsylvania, with one route from Frederick, Maryland, to Rochester, New York.

Mushroom Transportation Company, Inc., serves generally from the Philadelphia-Baltimore area into the Baltimore-Syracuse area.

Onondaga Freight Corp. operates in western New York and from Syracuse to Albany, Albany to New York, and Albany to Boston.

Red Star Express Lines of Auburn operates from Auburn, New York, to western New York points, with one route to New York City.

Highway Freight operates no regular routes and is located in Maplewood, New Jersey.

Shirks Motor Express Corp. operates from Lancaster, Pennsylvania, to Rochester to Cleveland and to Baltimore and Wilmington.

Of the remaining 14 carriers with gross revenues of less than \$300,000, one is a local drayage concern, 4 are irregular route operators, one is a special commodity carrier only, one operates between the Washington-Baltimore area to Syracuse, one is a 1490 Cleveland to Rochester single-route operator, and the remainder serve small portions each of the New York territory.

**Q.** In summary, then, what have you to say about the competition offered by Interstate Motor Freight System, Keeshin Motor Express Co., Inc., and Midwest Haulers, Inc., the three largest carriers?

**A.** Though actually very large operators in the area concerned in this merger, the three companies named actually serve less territory than some of the smaller local companies. No importance should be attached to their size as an indication of their competitive position in this territory. As a matter of fact, in regard to the territory here concerned, the names Interstate or Keeshin or Midwest Haulers, Inc., mean no more than the name Onondaga Freight Corp., since the operations of these three are no more extensive than that of the latter, and possibly less.

**Q.** What have you to say about the remaining companies shown in the exhibit?

**A.** I have already stated that Trans-American Freight Lines, Inc., and Motor Express, Inc., have been shown to be noncompetitive operations. There is a small section of highway at the western end of Moran's operations which may be commonly used by these carriers, but points of origin lying in Ohio and midwest points in each case is different from those of Moran. Spector 1491 for Motor Service, Inc., is shown to be a through-route operator from midwest points to points on the East Coast. The only operation which it has in competition with lines concerned in the application is one in the vicinity of the Hudson River Valley with an extension through Connecticut to Boston. W. T. Cowan, extending as it does only so far north as Binghamton, New York, is not in competition in the New York area.

Of the remaining carriers, certain others have been shown to be at least in part not competitive with lines concerned in the merger. These include the Lyons Transportation Company which has considerable special commodity operations in western Pennsylvania, and the A. & B. Fast Freight, Inc., which has considerable operation in Ohio and western Pennsylvania. The smaller companies I have already summarized.

Q. You have indicated the routes of the carriers, Mr. Berquist. What descriptions of routes have you based your testimony on?

A. I based the description of the routes on the information supplied in the annual reports to the Commission as described on page 51, "Regular Routes over which Respondent Operated at Close of Year."

Q. And when you have referred to the routes of the companies concerned in this application, have you referred to their annual reports or to the map shown in the application?

A. I have referred to the map shown in the application.

Q. When you have stated a conclusion as to the volume of 1492 a carrier in any certain territory, have you based that on a comparison of the mileage outside of the competitive territory as compared with the mileage inside the competitive territory?

A. Well, with what appeared to be the extent of the lines within and without.

Q. That was based on the assumption, then, that there was an equal distribution of volume over the companies?

A. That is correct. There was no segregation of volume by these areas; it was only based on a general distribution of the lines themselves.

Q. Do you assume to state that the volume actually does fall in those proportional balances; that is, equal tonnage on every route mile?

A. No, sir.

Q. That is just an assumption on which you base your testimony?

A. That is just an assumption; yes.

Q. I ask you to state whether you have caused applicant's Exhibit No. 6 to be examined to discover the Class 1 carriers included therein which were not included in applicant's Exhibits Nos. 2, 3, and 4.

A. In applicant's No. 6 there were found to be 23 Class 1 carriers which did not appear in any of the Exhibits 2, 3, and 4, and there were 6 Class 1 carriers—of those there were 6 for which there were reports in the Commission.

1493 Q. Available to you, you mean?

A. That is right.

Q. Will you please indicate generally the operations of each of those filed in the Commission?

A. It is by volume.

Q. Well, summarize generally, if you have the material before you, the operations of each of those carriers. Do you have with you the work sheets which you secured in connection with

your examination of the Class 1 carriers in applicant's Exhibit No. 6?

A. Yes; I do. In answer to your question, as to the size of the carriers by volume, there were two under one hundred thousand—that is gross revenue—for 1940; twelve that fell within the bracket one hundred thousand to two hundred thousand; two from two hundred thousand to three hundred thousand; one from three hundred thousand to four hundred thousand; three from four hundred thousand to five hundred thousand; one five hundred thousand to six hundred thousand; and there were two for which no figures were given as to gross revenue.

Q. Will you refer now to your work sheets on the Class 1 carriers in applicant's Exhibit No. 6 additional to those contained in applicant's Exhibits Nos. 2, 3, and 4 with respect to operations?

A. Individually?

1494 Q. Yes.

A. J. C. Driscoll had a revenue of \$128,636, and it operated from Boston to Gardner, Maine, Lewiston, Maine, Portland, Maine, Dover, New Hampshire, and Manchester, New Hampshire, five points; and six points, Boston to six points in Massachusetts and Rhode Island, Pittsfield, Westerly, Fitchburg, New Bedford, Providence, and Fall River. The Eastern Motor Freight Lines, as it is given in the exhibit, no carrier by that exact name was found; but one, The Eastern Motor Dispatch, was found.

Mr. MACDONALD. Before you proceed with that, is it possible for counsel to stipulate that the name was incorrect on the exhibit, or do they have that information available?

Exam. BAKER. Does counsel know?

Mr. MACDONALD. I might state that several were given in abbreviated form, so it is possible the exhibit did not purport to give the legal name of the company.

Exam. BAKER. Was the address given in the exhibit?

Mr. MACDONALD. Yes; it was.

Exam. BAKER. Off the record a minute.

(Discussion off the record.)

Exam. BAKER. Back on the record.

By Mr. MACDONALD:

Q. Will you continue with your summary, Mr. Berquist?

1495 A. It had a gross revenue of \$409,334 in 1940, and operated routes from Cincinnati, Ohio, to Boston, New York, and

Washington, D. C.; from Columbus to Boston and Scranton, Pennsylvania, and from Cincinnati to Scranton; Cleveland to Northumberland, Pennsylvania; from Fredonia, New York, to Jamestown; from Horseheads, New York, to Cortland; from

Syracuse to Binghamton; from Albany to New York; and it also operated a network in the State of Ohio. Dysart's Transportation had a gross revenue of \$176,330. It operated a route from Boston to Bar Harbor via Bangor. This operation would appear not competitive in this area for interstate business; that is, in the area considered in this application.

Q. You refer to applicant's Exhibit No. 6?

A. What is that?

Q. You refer to applicant's Exhibit No. 6—

A. That is right.

Q. When you refer to the territory?

A. That is right. Manning's Express is shown in the exhibit. The name of the carrier we found to be S. B. Manning, which we have taken. It operates a route from Bellows Falls, Vermont, to North Clarendon and North Thelford, Vermont, Lebanon, New Hampshire, and Leominster, Massachusetts. Its annual gross revenue was \$60,000 for 1940. This is a noncompetitive operation for interstate business as considered in this application.

1496 Alger Brothers, Inc., had a gross revenue of \$281,126; operates from Boston, Massachusetts, to points in Maine, Vermont, New Hampshire, and Northwestern Massachusetts.

The Boston and Maine Transportation Company had a gross revenue as a common carrier of \$518,772; as a contract carrier of \$110,339, and its route is from Boston to Vermont and New Hampshire, and to Portland, Maine, and many intermediate towns.

This operation is noncompetitive for interstate business.

The Cole Teaming Company, Providence, Rhode Island, operates as a general commodity carrier over irregular routes, non-radial routes. It had a gross revenue of \$63,710 as a common carrier, and \$125,594 as a contract carrier.

Craft's Motor Transportation, Inc., had a gross revenue of \$164,642, and operates routes from Newport, Vermont, to Boston, Massachusetts, Richford, Vermont, to Boston, Massachusetts, and Newport, Vermont, to Portland, Maine. This operation is noncompetitive for interstate traffic in connection with this application.

Atlantic Motor Express, Inc., had a gross revenue of \$487,075, and operated routes from Boston to Bath, Maine, Portsmouth, New Hampshire, to Dover, Dover to Somersworth, Dover to North Berwick, and a number of other short routes in Maine. This operation is noncompetitive for interstate business.

Mills Transfer Company had a gross revenue of \$120,592; 1497 operates routes from Boston, Massachusetts, to Manchester, New Hampshire, and from Boston, Massachusetts, to Haverhill, Massachusetts, Bridgewater, Connecticut, and Beverly, Massachusetts.

Munroe & Arnold-Merritt Express, Inc., had a gross revenue of \$160,098, and operates over the routes from Beverly, Massachusetts, to Boston, and from Peabody, Massachusetts, to Boston.

Service Transportation Company of Torrington, Connecticut, is given in the exhibit. A Service Transportation Company was found, but apparently does not operate in New England, and apparently is not the same—is not the carrier that we found among the Commission's reports.

Q. Omit it, then, and go to the next one.

A. Willey's Express had a gross revenue of \$196,897, and it operates in the Boston area and to Vermont, Rhode Island, and New Hampshire.

Wooster Express, Inc., had a gross revenue of \$267,432 and operates from Northampton to Newark, New Haven, Farmington, Hartford, Boston, and New Bedford.

Yoniden, Smith & Hopkins had a gross revenue of \$248,818; operated from Providence to Boston, Providence to Lowell, Graniteville, and Maynard. The character of service of this carrier: It carried wool, cotton, and byproducts, and operates altogether in eastern New England.

1498 Kirby's Express was the name given of the carrier in the exhibit. A carrier known as Kirby & Kirby, Inc., was found, which had a regular route unscheduled service, with gross revenue of \$479,479, and operated from Trenton to New York, Trenton to Waterbury, Connecticut, and Trenton to Philadelphia.

Shippers Service Express, Inc., had a gross revenue of \$46,708; operated regular route, nonscheduled service, from Boston to Springfield, Worcester, and from Springfield to Thompsonville, Massachusetts.

N. F. Smith & Company, Lowell, Massachusetts, was the name of a carrier given in the exhibit. The name of the carrier filed with the Commission is Nathan F. Smith & John F. Partels; had a gross revenue of \$168,804, operated from Manchester, New Hampshire, to Boston and Lowell, Haverhill, Milton, and Beverly, Massachusetts.

Stackpole's Motor Transportation had a gross revenue of \$154,076, operated from Boston to Milton, to North Rochester; Providence, Newark, Utica, and Rochester.

Sterling Express, Inc., had a gross revenue of \$157,470; operates from Boston to Lawrence, Manchester, Seabrook, Raymond, New Hampshire.

J. J. Sullivan, the Mover, had a gross intercity revenue of \$27,931, and a revenue for local transportation of \$109,909. It operated an irregular route and gave radial service.

1499 United Transportation Company of Rhode Island had a gross revenue of \$123,468, and operated routes from Boston to Providence, Providence to New London, New London to New York. Those are all of the carriers for which we found reports in the Commission on Exhibit 6 which were not previously covered in Exhibits 2, 3, and 4.

Q. Concerning ourselves with applicant's Exhibit No. 14, I ask you how many additional Class 1 carriers not shown on applicant's Exhibits 2, 3, and 4, were found in this exhibit?

A. There were two.

Q. Will you state what you found in reference to these two?

A. There was only one company for which there was an available report at the I.C.C., and that was A.C.E. Transportation Company, Inc., which had a gross revenue of \$200,203 in 1940, and this carrier operated a number of routes in Ohio, and from Erie to Edensburg, Pennsylvania, Albany to Boston, Schenectady to Boston, Williamstown, Massachusetts, to Norwalk, Connecticut, Greenfield to New Haven, West Becket to Stratford, Orange to Flemington, New Jersey, New London, Connecticut, to Athol, Massachusetts, Fitchburg, Massachusetts, to Groton, Connecticut, and there were 51 more routes, a network covering Massachusetts and Connecticut, with lines into Pennsylvania, New Jersey, and connections in the Mohawk Valley to New York City, also Long Island-New York connections to Connecticut.

Q. Referring now to applicant's Exhibit No. 16, will you  
1500 state what your examination showed as to additional Class 1 carriers found in this exhibit not contained in applicant's Exhibits Nos. 2, 3, and 4?

A. There were 21 additional carriers—

Mr. JOSELOFF. Excuse me. That is with reference to what exhibit?

Mr. MACDONALD. 16.

Mr. JOSELOFF. Thank you.

A. There were 21 additional carriers found to those already given on Exhibits 2, 3, and 4.

By Mr. MACDONALD:

Q. Of those how many could you find reports for?

A. There were 15 reports available at the I. C. C.

Q. Will you summarize briefly what your examination of those reports revealed?

A. J. W. Propst, Jr., Inc., had an annual revenue of \$277,596; operated an irregular route, nonradial service.

Southern Motor Express, Inc., Birmingham, Alabama, had a gross revenue of \$230,183.52. It operated from Birmingham, Ala-

bama, to New Orleans, to Jackson, Mississippi; from Jackson, Mississippi, to New Orleans, and from Birmingham, Alabama, to Tuscaloosa, Alabama.

Grey Van Lines, Inc., operates an irregular route, nonradial service; gross income of \$1,255,818.

Q. Before you leave that carrier, Mr. Berquist, do you know of your own knowledge the type of carriage this carrier offers to the public?

A. I know that it is engaged in the long-distance moving business, for one thing.

Q. Moving of what?

A. Moving of household furniture.

Exam. BAKER. Do you know whether their business is confined to moving household furniture?

The WITNESS. That I can't answer. I know they do that. More than that I do not know.

Exam. BAKER. Proceed.

The WITNESS. John D. Bair, Jr., had a gross operating revenue of \$123,876; operated routes from Chester, Pennsylvania, to New York and to points in New Jersey, Delaware, Maryland, Washington, and Connecticut.

Askin Trucking Company, Inc., had a gross operating revenue of \$28,474. This carrier's operations are 80 to 90 percent local. A large portion of the carrier's business consists of renting trucks with drivers to customers who have complete direction and control of operation.

Sullivan Lines had a gross of \$265,360. It operates as a contract carrier of general freight, and it is a contract carrier only.

Apex Express, Inc., had a gross operating revenue of \$194,102. It operates a regular route from Philadelphia to Washington, Camden to Washington, Camden to Philadelphia, Philadelphia to Trenton, Burlington, New Jersey, to Bristol, Pennsylvania, Atlantic City, New Jersey, with irregular coverage in Middlesex County, New Jersey, Atlantic City to New York, Atlantic City to Philadelphia via Camden.

Needham's Motor Service, Inc., had a gross revenue of \$225,896; operates from Atlantic City to New York and Philadelphia to New York.

Salem Express had a gross revenue of \$246,344. It has an irregular route operation, with no specified routes shown in the report.

Victor Lynn Lines, Inc., had a common carrier gross revenue of \$613,750 and a contract carrier revenue of \$54,742; operates from New York to Chincoteague, Virginia, New York to Baltimore, Maryland, Baltimore, Maryland, to Milford, Delaware.

Shein's Express, Inc., had a gross revenue of \$790,067; operates a route from New York to Wilmington, Delaware.

Carolina-Norfolk Truck Line, Inc., had a gross revenue of \$134,820; operates from Norfolk to Wilmington, Goldsboro, Fayetteville, Charlotte, High Point, Raleigh, Salisbury, North Carolina.

Georgia Highway Express, Inc., had a gross revenue of \$579,274; has a network of lines in Georgia, with lines extending to Knoxville, Tennessee, and Chattanooga, Tennessee, and Fairfax and Phoenix City, Alabama.

1503     Marshalls Express had a gross of \$119,652; operates over route from St. Michael, Maryland, to Philadelphia, Pennsylvania, and Baltimore, Maryland, and from Baltimore, Maryland, to New York.

Cumberland Mountain Express Corp. had a gross revenue of \$164,492, and operates over route from Baltimore to Washington, D. C., Pittsburgh, Hagerstown; from Hancock to Bedford, Cumberland to Pittsburgh, Uniontown to Pittsburgh, Cumberland to Westernport, Bedford to Altoona, Jamestown to Armagh, Baltimore to Philadelphia, Baltimore to Wilmington, Cumberland to Oakland, Keysera Ridge to Parsons, West Virginia, Piney Grove, Maryland, to Janerstown, Washington, D. C., to Frederick.

Those are all the carriers in Exhibit 16 not previously included in 2, 3, and 4, for which we found reports available at the I. C. C.

By Mr. MACDONALD:

Q. You are referring to the Class 1 carriers?

A. Class 1 carriers; yes, sir.

Q. Referring to applicant's Exhibit No. 17, will you state how many additional Class 1 carriers were found in this exhibit that were not previously included in other applicant's exhibits?

Exam. BAKER. Before we proceed with that exhibit we will take a recess for 15 minutes.

(Whereupon a short recess was taken.)

1504     Exam. BAKER. The hearing is resumed. Do you want the last question read?

Mr. MACDONALD. No; I know what it is. Thank you.

By Mr. MACDONALD:

Q. Mr. Berquist, referring to applicant's Exhibit No. 17, how many additional Class 1 carriers were found on that exhibit not included in applicant's preceding exhibits?

A. Twelve additional carriers were found, of which for ten there were reports available at the I. C. C.

Q. And referring to applicant's Exhibit No. 19, how many additional Class 1 carriers were found on this exhibit not previously listed by applicant?

A. There were 31 new carriers found not included in the previous exhibits, of which for 24 reports were available at the I. C. C.

Q. Can you state generally, insofar as time was allowed you to investigate these carriers, whether or not the nature of their operations is comparable to those previously covered by you, referring to applicant's Exhibits 6, 14, and 16, as to size of gross operating revenue, the type of service, and generally, routes covered?

Exam. BAKER. I do not believe the answer to that would mean anything on the record, Mr. Macdonald. The testimony was so varied it is impossible to state just what he had in mind.  
1505 Mr. MACDONALD. I was just trying to save time, Mr.

Examiner. There are, as Mr. Berquist has testified, 34 additional Class 1 carriers in these two exhibits not yet covered, and we can go over them one by one from the work sheets which have been assembled under Mr. Berquist's direction, but I thought if he were allowed to summarize it would save that much time.

Exam. BAKER. What do applicants have to say with respect to that?

Mr. SULLIVAN. Well, that is the same stipulation that he did not want to go along with with Mr. Miller this morning, but so far as I am concerned it is all right with me.

Mr. MACDONALD. I do not think it is the same type of stipulation.

Mr. SULLIVAN. Well, it depends on where you sit.

Exam. BAKER. I would prefer that you go ahead with it.

Mr. MACDONALD. Very well. I will be glad to do so, Mr. Examiner.

By Mr. MACDONALD:

Q. Referring to the Class 1 operators additional to those previously listed by applicants on other exhibits, and directing your attention now to applicants' Exhibit No. 16, what have you to say regarding the operations of the Class 1 carriers found on this exhibit?

A. I think I have summarized 16.

Q. I am sorry. You have covered 16. Seventeen is what I have in mind.

1506 A. Erie Freight Lines, Inc., had a gross revenue of \$679,334 and operated routes in Wisconsin and Illinois from Cadiz, Ohio, to New York, Toledo, Ohio, to Bay City, Michigan, and a number of other routes in Wisconsin, Illinois, Michigan, and Pennsylvania, Ohio, New Jersey, and Indiana.

Buffalo Storage & Carting Company had a gross revenue of \$395,473 and operated a route from Buffalo, New York, to Cleveland, Ohio.

All-States Freight, Inc., had a gross revenue of \$1,095,742 and operated from Akron, Canton, Cleveland, and Mansfield, Ohio, to New York City, Bridgeport, Connecticut, and Boston, Massachusetts, and had other routes from Cleveland to New York, Springfield, Illinois, to Chicago, Vanwirt to Chicago, and Toledo, Ohio, to Chicago.

Amsterdam Dispatch, Inc., operated irregular routes, nonradial service, and had a gross revenue of \$225,059, and operates out of Amsterdam, New York.

The Globe Cartage Company, Inc., had a gross revenue of \$807,711, exclusively a contract carrier, operates a nonscheduled regular route out of Indianapolis, Indiana.

Exam. BAKER. Mr. Berquist, in connection with that company, has it been determined to be a contract carrier or does it claim to be a contract carrier?

The WITNESS. The notations found—the schedule relating to the Globe Cartage Company was missing.

1507 Exam. BAKER. Why do you state that it is solely a contract carrier? What is the source of your information on that?

The WITNESS. That was the information that the men who were assisting me in compiling this obtained with respect to this operator.

By Mr. MACDONALD:

Q. Was it taken from the annual report?

A. Yes; this was taken from the annual report.

Q. The statement of the carrier?

A. Probably the statement of the carrier to the effect that it was a contract carrier.

Exam. BAKER. All right. Proceed.

The WITNESS. Mutual Trucking Company had a gross revenue of \$922,385; operated from Buffalo, New York, to Columbus, Ohio, and operated a total of 34 routes, with no other route than the one given being east of Columbus, Ohio.

Motorage Transit Lines, Inc., had a gross revenue of \$257,234; operates from Buffalo to Niagara Falls, New York, and to Pittsburgh, Pennsylvania, and intermediate points.

McCullough Transfer Company was an irregular, nonradial operator, had a gross operating income of \$764,973, and operates out of Youngstown, Ohio.

Midwest Freight Forwarding Company had a gross of \$241,311, and operated routes from Chicago to Philadelphia, New York,

and Boston, from Bridgeport, Connecticut, to Chicago, and  
1508 Peoria, Illinois.

Kultan Motor Express had a gross revenue of \$158,572, and operates from Pittsburgh to Buffalo, Erie, Meadville, New York, and Portersville, Mercer, and Elizabeth, Pennsylvania, from Meadville, New York, to Buffalo, New York, from Grove City, Pennsylvania, to Meadville, and from Waterford, Pennsylvania, to Erie, Pennsylvania.

By Mr. MACDONALD:

Q. Referring now to applicant's Exhibit No. 17, will summarize the additional Class 1 carriers found on this exhibit?

A. I just completed that.

Q. Did I say 17? I meant to say 19. I am sorry. I am always one behind.

A. Thirty-one additional carriers were found in Exhibit 19 which were not previously included in the Exhibits 2, 3, and 4, out of which for 24 there were reports available at the I. C. C.

The York Motor Express Company had a gross revenue of \$1,301,361, and operated lines over routes from Washington, D. C., via Baltimore to Wilmington, Philadelphia, Trenton, and Newark, by various routes to the New York metropolitan area, from New York to Bridgeport, Connecticut, Baltimore, Maryland, to York, Pennsylvania, and to Harrisburg, from Harrisburg to Philadelphia via Reading, Harrisburg to Lancaster and  
1509 to Easton, Easton to Somerville, New Jersey, and to Newark via Baltimore, Maryland, to Littletown, Pennsylvania, from Lebanon, Pennsylvania, to Newmanstown, from Reading to Spring City, and a number of other routes between points in eastern Pennsylvania.

Weimer Storage Company, Inc., a carrier of petroleum products, over irregular radial routes, out of Elizabeth, New Jersey, had a gross revenue of \$215,000.

Schreiber Trucking Company had a gross revenue of \$304,928, operating from Pittsburgh to Baltimore, Washington, New York, Chicago, Atlantic City, Boston, Cleveland, Cincinnati, Buffalo, Rochester, Syracuse, Utica, Schenectady, Albany, Troy, Philadelphia, New York.

Mr. SULLIVAN. What was the name of that carrier?

The WITNESS. Schreiber Trucking Company, S-c-h-r-e-i-b-e-r. All routes starting at Pittsburgh.

The Shippers Freight Forwarding Company had a gross revenue of \$417,899; operates from Cleveland to New York via three alternate routes.

The Reading Transportation Company had a gross revenue of \$426,275; operates a network of routes in eastern Pennsylvania, including Philadelphia, Harrisburg, Allentown, Norristown, Pottsville, Birdsboro, Shamokin, Pottstown, Hereford, Barnes-town, Reading, Doylestown, Bridgeport, Tamaqua, and Port Carbon.

Rodgers Motor Lines, Inc., operates from Scranton; 1510 routes from Scranton, New York, Binghamton, Hazletown, Berwick, Honesdale, and Halley, Pennsylvania.

H. L. Goble & Company, Inc., had a gross revenue of \$164,113; operates from Great Meadow to New York, Newark, Scranton, Reading, Allentown, Easton, Lehigh, Hazletown, Palmerton, Wilkes-Barre, Pottsville, Freemansburg, Bethlehem, Mount Pocono.

Friedman's Express, Inc., had a gross of \$235,813; operates over routes from New York to Wilkes-Barre, Wilkes-Barre to Forest City, Carbondale to Halley, Wilkes-Barre to Northumberland and Sunbury, Tamaqua to Lehigh.

Follmer Trucking Company had a gross of \$299,397; operates from Loch Haven, Pennsylvania, to Philadelphia, and New York, Harrisburg to Newark, Newark, New Jersey, to New York City. It operates in other points in Pennsylvania. Has one route to Baltimore, Maryland, and Harrisburg.

Fast Trucking, Inc., operates over irregular routes, radial service. Gross operating income not available. It handled 39,534 tons of traffic.

Daley's Blue Line Transfer Company, Inc., had a gross revenue of \$145,169; operates from New York to Forest City, Pennsylvania, to Sunbury, from Wilkes-Barre, to Pottsville, Pennsylvania, from New York to Reading, Mauch Chunk, Pottstown, and Allentown.

Lehigh Valley Transportation Company, operates over 1511 irregular routes, radial service; had a gross revenue of \$52,423; operates in the region of Bethlehem, Easton, Allentown, and other eastern Pennsylvania points.

R. F. Post operated over irregular routes, nonradial service; had a gross revenue of \$158,787; operates out of Scranton, Pennsylvania. No specific routes given.

New Pennsylvania Motor Express, Inc., had a gross revenue of \$137,169; operated over routes from Lebanon, Pennsylvania, to New York City.

New York and Pennsylvania Motor Express, Inc., and Pennsy Cart Corporation had a gross revenue of \$166,291; operates from New York to Reading, Reading to Hanover, Harrisburg, Carlisle, and Sunbury, from Tamaqua to Hazleton, Pottsville,

to Halifax, Lancaster to Harrisburg, Reading to Phoenixville, Allentown to Bangor, Souderstown, and Hazleton.

Middle Atlantic Transportation Company, Inc., had a gross operating income of \$509,797; operates from New York to Detroit, Michigan, New York to Pittsburgh, and operates from New York to Hartford, Connecticut.

Modern Transfer Company, Inc., had a gross operating income of \$271,734, operating from Allentown to Philadelphia, Philadelphia to Easton, Allentown to Doylestown and New York.

Lancaster Transportation Company had a gross revenue of \$174,911, operating from Lancaster, Pennsylvania, to Philadelphia, and Camden, New Jersey, from Pottsville, Pennsylvania, to Philadelphia, Pennsylvania.

Crown Motor Freight Company, irregular route, non-radial service, had a gross revenue of \$141,975; operates from Paterson, New Jersey, to New York City and to points in Pennsylvania, to Fall River and Bedford, Massachusetts, and some other points in Connecticut and Massachusetts.

Keystone Express and Storage Company, had a gross revenue of \$151,832; operates from Lancaster, Pennsylvania, to Philadelphia, Reading, and Lebanon.

Karn's Transfer, Inc., had a gross revenue of \$160,366; operates between Reading, Pennsylvania, and Carbondale, Pennsylvania.

Jones Motor Company had a gross revenue of \$182,557; operates from Spring City, Pennsylvania, to New York City, Pottstown to Philadelphia, Reading—I can't make out the name—to an indefinite point. I can't make it out.

Gorman Brothers Motor Transportation, Inc., had a gross revenue of \$220,333; operates from Cincinnati to Charleston, West Virginia, Ashland, Kentucky, to Greenup, Kentucky, Cincinnati to Ashland via Washington and Chillicothe, Ohio, and Cincinnati to Flemingsburg.

Lehigh Transportation Company, Inc., irregular route, non-radial service, had a gross revenue of \$346,492, operating from Newark, New Jersey.

By Mr. MACDONALD:

1513 Q. Mr. Berquist, have you attempted in any way to determine what might be called the actual operations of these carriers insofar as the actual operations may vary from the routes each carrier has listed on its annual report?

The WITNESS, May I have that question again, please?  
(Question read.)

A. No; I have not.

By Mr. MACDONALD:

Q. Referring to your testimony in regard to the operation of the York-Buffalo Motor Express, and to the statement you made that the Moran Lines do not extend into the Philadelphia-Baltimore-York-Harrisburg-Lancaster area, and referring you to the map contained in the application, what have you to say as to the inclusion of Philadelphia in this list of cities?

A. Philadelphia obviously, according to this map, should not be included.

Q. It is served by Moran?

A. Yes, it is served by Moran.

Q. From Binghamton?

A. Yes, from Binghamton; that is correct.

Q. Do they also have a line coming down to Sunbury from the west which does not extend down into the territory you refer to here?

A. That is correct. It goes to Sunbury, and I believe Shamokin.

Q. Have you prepared exhibits or caused to be prepared 1514 exhibits or caused to be prepared exhibits similar to those prepared on applicant's Exhibits No. 2, 3, and 4, namely intervenors' Exhibits No. 22, 23, and 24, for the carriers which you have covered in your testimony here?

A. These later carriers for which I read from the original transcript?

Q. Yes.

A. No; I have not.

Q. Why have you not?

A. Time just has not permitted.

Mr. MACDONALD. That is all the direct, Mr. Examiner.

Exam. BAKER. Cross-examination.

Cross-examination by Mr. SULLIVAN:

Q. I assume, sir, from the statement made by Mr. Macdonald to the Examiner the other day, that this testimony of yours is offered for the purpose of being of assistance to the Interstate Commerce Commission in determining this application.

A. I take it so to be.

Q. I mean that is your intention.

A. I certainly did not intend anything to mislead the Commission.

Q. Did I say you did?

A. Well, I hope it might be helpful, let us put it that way.

Q. And that was the only purpose you had in preparing the exhibits in the manner you prepared them?

1515 A. May I—

Q. I say your only purpose was to be of assistance to the Commission?

A. That is correct.

Q. And now, as I remember, when you were describing your educational and practical qualifications you said you had had experience in making a study of the trucking industry so far as it pertained to the hauling of coal; was that it?

A. That was correct.

Q. Or it was the transportation industry, and then you gave as an example that you had made some kind of a study of the hauling of coal.

A. We made, oh, a number of specific studies which may have involved anywhere from 75 to 100 different what was termed long-haul movements from mines to centers of consumption.

Q. Of coal?

A. Of coal, of both anthracite and bituminous coal; that is correct.

Q. Then you referred to your other transportation experience with respect to the transportation of petroleum products, I believe, by pipe line and—was it boat or rail?

A. By rail, in connection with pipe line movement, yes; that is right.

Q. Are those the qualifications which we are to understand you rely on in giving us the benefit of your opinion here with  
1516 respect to the over-the-road motortrucking industry?

A. Well, no; I have sought to do a workable factual job of such material of the trucking industry as has been reported to the Commission, and it is not intended to be other than factual material, factual evidence.

Q. Well, let me see, then, as I understand it, is this a fair statement of what you intended, that it is to be the viewpoint of a layman in the motor trucking industry so far as it pertains to over-the-road after studying the annual reports and docket files of the Commission?

A. Well, frankly, I am not expressing a viewpoint as an expert in motortruck transportation by any means. I have tried, and have actually done, accurately and carefully those things which I have given in testimony here today. As to interpretative aspects such as an expert witness might give for the trucking industry, I have not endeavored to do that.

Q. Well, may I ask you this, then: Do you feel that it is possible for one who is not an expert or intimately acquainted with the manner in which the motortruck industry, or the segment of it with which we are concerned, operates—in you feel it is possible

for a person who has not had such acquaintanceship to set out and develop a statistical study or a formula which will serve a useful purpose in guiding the Commission in its deliberations here?

Mr. MACDONALD. Mr. Examiner, I object to that question. 1517 He has not attempted to set out a formula. We did not attempt to qualify him as an expert witness. He has merely reduced the factual data, as a statistician and economist, and determined what facts they represent.

Exam. BAKER. If you understand the question, you may answer it. Mr. Berquist.

The WITNESS. May I have the question?

Mr. SULLIVAN. I will rephrase it if it will save any time.

Exam. BAKER. Suppose you rephrase it.

By Mr. SULLIVAN:

Q. Do you feel that it is possible to develop statistical figures or conclusions with respect to those statistics without a somewhat intimate knowledge of the operations of the trucking industry?

A. Well, insofar as I have dealt with the figures of the trucking industry, it seems to me they have been of a nature that would not require expert knowledge as to the operating details of the trucking industry, but have been of a character which I, I believe, can understand and, I think, can present intelligently without creating any false impressions, or any other errors or inconsistencies. However, as far as interpreting any, you might say, cause-and-effect relationships within the trucking industry as to its manner of operations and the like, that I have not attempted to do.

Q. Well, haven't you attempted, sir, to give us conclusions as you went along in your direct testimony with 1518 respect to the question of whether or not one or more of these lines was competitive with one or more other lines?

A. Well, they are only, you might say, conclusions of fact, the kind of conclusions that might logically be drawn from facts that did not require any further basis for conclusion than the facts themselves.

Q. Well, let us put it this way: You have given numerous conclusions, that the A Line is not competitive with the B Line, or that the A Line is not competitive within a given territory. What was the basis on which you reached your determination as to whether competition existed or not under such circumstances?

A. Well, by examination of the reported routes covered by the carriers that I examined and the routes indicated in the proposed merger, and in many of those cases you refer to, they were routes that were geographically separated by miles of distance and, ob-

viously, if they were so separated, they would not be competitive.

Q. Now, isn't that rather the conclusion of a layman?

A. Well, that would be a conclusion of a layman, and I think it would be the conclusion of one who posed as an expert. For one I cannot see how he can conclude anything else.

Q. Have you been in the room here—I think I have observed you substantially all the time for the last few days.

1519 A. Not all the time.

Q. You have heard the testimony of the witnesses?

A. I have heard some of it; yes.

Q. Did you hear testimony to the effect that the numbers of connecting carriers that not only each of the lines concerned in this application connect with but the numbers of lines that certain interveners connect with?

A. That is correct.

Q. Well, would that have any significance to you as to whether or not the actual routes shown in an I. C. C. application or annual report was the determining factor, as to whether the business flowing over that line solely came from the points along that line?

A. Well, I would say this, that insofar as we made any comments of that kind they were based upon the fact that the same territory, or the same routes, or the same bases, were not served by lines compared in any such comparative statement. Now, obviously, if one company serves a community and another company does not, why, as between those two companies directly in that community they are not competitive, would be my observation.

Q. Did you also hear the testimony of the witnesses here today and yesterday as to the solicitation which they do for freight destined to points not over their own line?

A. I have heard reference to that. I was not here but for  
1520 just a few moments this morning.

Q. Well, you heard sufficient to rather gather the idea that the trucking companies do not confine their solicitation for freight to their own points, but rather include in that solicitation the points served by their connections, so that they may get the haul over the part where they have an operation.

A. Yes.

Q. Now, then, if that is the fact in the trucking business, the further fact with which you concerned yourself that lines do not necessarily serve the same points would be no absolute criterion as to whether they were in competition, would it?

A. No; I think not. You may have by another connection other arrangements, very much the same effect as if two lines might parallel all the way between two points. That is quite correct.

Q. So that there isn't any question that we understand each other, you had considered that but you simply had no means before you to consider connections in that respect when you were making up the report.

A. I had only the facts that we found in the I. C. C. reports, and I tried to confine myself just to such basic facts as were there presented.

Q. Then you reached the conclusion of another nature—I will leave that for the moment—you reached the conclusion of 1521 the nature that certain carriers which you named, a rather large number of them, were special haulers. You said they were principally a textile hauler, for example, or they were principally a cigarette hauler—

Mr. MACDONALD. Mr. Examiner, that testimony was objected to and the witness was not allowed to pursue that type of testimony, so I suggest that it is not proper cross-examination, having been excluded before.

Mr. SULLIVAN. I beg your pardon.

Exam. BAKER. As I recall, there was an objection made to a statement that certain carriers were largely engaged in the carriage of certain commodities.

Mr. MACDONALD. That is the statement to which I refer.

Exam. BAKER. However, it did go into the record.

Mr. SULLIVAN. Mr. Examiner, what happened was that he had already given it. Then what happened was you admonished the witness that when he referred to further ones in the future that he give the source of his information, but you did not tell him not to do it.

Mr. MACDONALD. That source in each case was the file of the Commission. Mr. Sullivan's question as stated is "You have also made conclusions," which seems to me makes the question clearly objectionable, because they are facts.

Mr. SULLIVAN. He says they are facts; I say they are conclusions.

1522 Exam. BAKER. I see no objection to the question, since these statements were made on direct examination.

Mr. MACDONALD. Well, I do not like the form of the question where it imputes to the witness a function that he did not exercise. I will withdraw the objection if the question is restated.

Mr. SULLIVAN. I will rephrase it, Mr. Examiner, so we will move along.

Exam. BAKER. Very well.

By Mr. SULLIVAN:

Q. As you went along at least on certain carriers here you stated that they were principally a cigarette carrier, or principally a

textile carrier, or principally this or that kind of carrier, did you not?

A. Yes; in several cases.

Q. All right. And in making that statement how did you arrive at it?

A. Well, I have seen some of the transcript of this hearing, and such an example as the movement from Kannapolis. I think it has been testified that that represented from Kannapolis largely a movement of the products of the Cannon Mills, towels and items of that kind.

Q. Did any transcript that you saw or any I. C. C. report say that a carrier was principally a towel carrier or principally a textile carrier?

A. I do not know if it said it exactly in those words, but it appeared that that was its principal carriage business from a given point.

Q. Then that was your conclusion, wasn't it?

A. That is right.

Q. Then what are we arguing about? Then, with respect to your conclusion that certain of these carriers were principally textile carriers, or were principally towel carriers, or something else—

MR. MCDONALD: I object, Mr. Examiner, unless the counsel is willing to state which were conclusions and which were drawn from the files of the Commission.

By Mr. SULLIVAN:

Q. They were all conclusions, weren't they, or shall we try them out one by one?

A. No. This is information and data that was obtained from the files of the Commission supplied to me by persons who were working for me in the assembling of this material.

Q. You mean it was not your conclusion; it was theirs?

A. They were evidences or statements of fact to that extent, and to that extent they were incorporated as, you call them, conclusions; I put them down as statements of facts.

Q. Can you point to a single place in the Commission's files, one place or another, where any carrier says "I am principally a cotton goods carrier" or "I am principally a tobacco carrier?"

A. Oh; they do not say it that way.

1524 Q. No.

A. I do not think you will ever find those words. But if we examine the files we find evidences of what they are doing. They do not say it in just those words.

Q. And you draw the conclusion that that is what they are doing.

A. Well, they don't need to say it in the words "I am such and such kind of a carrier"—

Q. No; you just say it for them.

A. Without coming to the conclusion that that is what they mean. Other words may mean the same thing, I take it.

Q. Now, with respect to those statements, or conclusions, or whatever you want to call them, that a carrier is principally a textile carrier, I ask you, if the files show that 70 percent of Horton's northbound business was textile business, would you say that Horton was principally a textile carrier?

A. If it showed that its northbound business was 70 percent textile?

Q. Yes.

A. I think it would be a fair statement to say that its principal business northbound was the carrying of textiles.

Q. In making comparisons, then, for the purposes of the testimony that you gave, would it have been fair, following the method that you have used, comparing textile competition between  
1525 Horton and textile carriers, to have eliminated Horton from here on the ground that his principal business was textiles?

A. I don't think Horton was eliminated on that ground. It was merely descriptive of the kind of traffic. I don't think these statements were necessarily eliminations; they were explanatory of the traffic.

Q. As I recall your testimony—and you correct me if I am wrong—in making various computations with respect to the competition in the south, you said, "We can, in effect, eliminate this carrier. He is principally this sort of a carrier."

MR. MACDONALD. I object, Mr. Examiner.

A. I don't believe I said just that. I would like to go back over the record and have pointed out to me where I said that. I don't believe I said that.

MR. MACDONALD. I think that is objectionable. Counsel is predicating his question on something which is not a fact.

Exam. BAKER. Just a moment. As I recall, in connection with Exhibit No. 22, certain eliminations were made to add up the gross revenues of a few of the carriers there listed, and then it was stated that if we eliminate certain other carriers—I do not recall definitely what they were—that it would appear that the carriers involved in this proceeding would control 50 percent of the trade involved.

MR. MACDONALD. That is correct, Mr. Examiner.

1526 Exam. BAKER. There were certain eliminations. I do not recall definitely what they were. Do you recall how you arrived at those figures, Mr. Berquist?

The WITNESS. May I go back to that section of the—

Exam. BAKER. Yes.

Mr. SULLIVAN. If he is going to have an opportunity to go back and look over the written part of his testimony, I should have a chance to look at the written part of his testimony; otherwise the Reporter should read it all back.

Exam. BAKER. I am trying to clarify this point.

Mr. SULLIVAN. Yes. I want to see what he is going to look at.

Exam. BAKER. He is going to look at the notes, I assume. Would you go back to that particular point so we can clarify this. How did you arrive at the conclusion that Associated Transport, Inc., would control 50 percent of the traffic?

Mr. MACDONALD. To refresh your memory, I ask you to turn to page 13. Do you wish us to give the question and answer which is part of the prepared testimony, or do you want to go off the record and have us read it to you?

Exam. BAKER. In connection with the total figure that you arrived at, if you will give that.

Mr. MACDONALD. I can state for the Examiner's benefit 1527 that we assumed movements between North Carolina and eastern Tennessee points into the New York area and eliminated all carriers which did not have a single line movement over that territory. It did not have to do with special commodities, but merely the routes of the carriers.

Exam. BAKER. What carriers were left that you added up?

Mr. MACDONALD. Do you wish me to state or the witness?

Exam. BAKER. You may state.

Mr. MACDONALD. Mason Dixon Lines, Brooks Transportation Company, Roadway Express, Akers Motor Lines, Atlantic States Motor Freight Lines, Harris Brothers Transfer Company—Are you reading over my shoulder?

Mr. SULLIVAN. May I?

Mr. MACDONALD. No.

Mr. SULLIVAN. Mr. Examiner, I think this is a performance that I object to. They have the benefit of going back and picking out particular spots from the document that they have written, and I do not have that advantage.

Mr. MACDONALD. Mr. Examiner, may I make a statement?

Exam. BAKER. It is unfortunate, but we want to get at the facts.

Mr. SULLIVAN. I want to get at the facts.

Mr. MACDONALD. In that case I cannot understand any objection to determining what the fact was.

Mr. SULLIVAN. I want to go back and determine that.

1528 Mr. MACDONALD. May I state at this time, Mr. Examiner, as you know, and as the Commission is aware,

we have had limited time in which to prepare this testimony, and we have gone to what we considered the best available source, which is the records of the Commission. Insofar as any omissions in the evidence we presented today, we feel that the applicant should concern himself about rectifying rather than criticizing, since it is his case we are trying to add to. In that spirit, it seems to me that Mr. Sullivan could confine himself to ascertaining what the facts are rather than attempting to subscribe to our motives something which does not exist.

Exam. BAKER. Complete your reading of it.

Mr. MACDONALD. I believe I have stated Akers Motor Lines.

Exam. BAKER. You had gotten as far as Harris Brothers.

Mr. MACDONALD. Harris Brothers Transfer Company, Mundy Motor Lines, Super Service Motor Freight Company, Miller Motor Express Company, and Preston Trucking Company, Inc., that is 10 companies, and we then went into the total of their gross revenue figures as compared with the gross revenue figures of the three lines in the unification which operate over that extended route from North Carolina and eastern Tennessee to the New York metropolitan area.

Exam. BAKER. Now, Mr. Berquist, why didn't you include Carolina Freight Carriers Corporation in that?

The WITNESS. Carolina Freight—

1529 Mr. MACDONALD. May I suggest, Mr. Examiner, further that this is predicated on applicant's Exhibit 2, and if there are any omissions, they occur in applicant's Exhibit 2.

Exam. BAKER. Well, Carolina Freight Carriers Corporation is listed on your Exhibit No. 22. I was wondering why it was not included in the names you just read as having been added together for comparative purposes.

The WITNESS. If it is in Exhibit 22, it did not appear in Exhibits 2, 3, and 4.

Exam. BAKER. In other words, what is your testimony as to the service of the Carolina Freight Carriers Corporation? Can you repeat that?

Mr. MACDONALD. Will you refer to your work sheets, Mr. Berquist.

The WITNESS. Carolina Freight Carriers Corporation, according to the Commission, operates an irregular route, radial service.

Mr. MACDONALD. Did you say irregular route?

The WITNESS. Irregular route, radial service.

Exam. BAKER. Between what points?

The WITNESS. I am sorry, Mr. Examiner. I cannot give you the points between which it operates from my record here.

Mr. MACDONALD. Does that indicate that the annual report—  
The WITNESS. The annual report did not show the routes.

Exam. BAKER. I have almost forgotten what the objection is now.

The WITNESS. In each case the notation given for the routes covered by any of these carriers which we have taken from the I. C. C. records indicated the route covered. In this instance the notation which we have for the Carolina Freight Carriers Corporation is "irregular route carrier," and that is all the information that was obtainable.

Exam. BAKER. Mr. Sullivan, will you proceed now, and when an objection is made I will rule on it.

Mr. SULLIVAN. I am going to skip it. I am plain lost on that one.

Exam. BAKER. I am sorry I interrupted you.

Mr. SULLIVAN. Well, I will remove the credit for getting lost and pass it back to Mr. Macdonald.

Mr. MACDONALD. I do not accept it, Mr. Sullivan. I was merely trying to help you out.

By Mr. SULLIVAN: . .

Q. I will ask you, sir, if somewhere in your testimony you referred to carriers as being a carrier of this or a carrier of that, what significance did you intend should be attached to that remark?

A. Well, in the main it would indicate they were not general freight carriers, and so in a broader sense, since they were not carriers of general commodities, were not generally competitive.

Q. All right. Then, if the Horton Lines' north-bound business is 70 percent textiles, you would reach the conclusion, or you would make the statement, following along the line you did follow, that Horton was not in competition with the other carriers listed in that Exhibit 22 because he would be principally a north-bound textile carrier? Would that be the way it would have worked out in the way you testified?

A. No; I would not say that.

Q. Why not?

A. Well, after all, what I have said there was descriptive of the kind of carrier and was indicative of the measure of competition generally in connection with other carriers. Now, you mentioned Horton, which is the largest carrier in that area, whose remaining 30 percent carriage business in general commodities would be very substantial. In fact, it would be much larger than even most of the other carriers named here.

Q. Well, pursue that a second. Horton, you said, had around four and a half million dollars.

A. Horton has for 1940 had \$4,250,033 as its gross revenue.

Q. In round figures, then, we could say, if we assume that half of it was each way, he would have about two million dollars one way, wouldn't he?

A. That is right; and 30 percent of two million dollars is \$600,000.

Q. So that using that same line of reasoning, he would  
1532 get almost half way down that page on Exhibit 2; before he would be coming in, wouldn't he?

A. Well—

Mr. MACDONALD. I object, Mr. Examiner, on the ground that this is a one-way movement, whereas these figures represent a two-way movement.

By Mr. SULLIVAN:

Q. I meant half way down the first group that you have at the top of the page.

A. Yes. you calculated Horton's revenue on general traffic at 30 percent of his total revenue; your revenue figure for Horton of 30 percent would be, of course, only 30 percent of Horton's total revenue, and he therefore would be further down the line.

Q. And so far as you know, the same thing might be true of Barnwell?

A. If you apply the same principle, the same thing would be true.

Q. Or any of these other carriers.

A. That is correct.

Q. So would you still say it was indicative of anything in particular to say that a carrier principally hauls textiles?

Mr. MACDONALD. Mr. Examiner, I object. The witness did not so state.

Exam. BAKER. Objection overruled.—

The WITNESS. May I have the question again, please?

1533

By Mr. SULLIVAN:

Q. So you would say it is indicative of anything in particular to say that a carrier principally hauled textiles or principally hauled some other commodity?

A. Yes; it is indicative.

Q. What is it indicative of?

A. It is indicative of the fact, to the extent that they are engaged in the carriage of that principal commodity, to that extent they are reduced as competitors in the hauling of general commodities.

Q. But if 70 percent of Horton's northbound business was textiles, it would be the textile haulers who would be in competition with him?

A. Yes. If you want to compare textiles with textiles, that might be true.

Q. Now, then, you have described the routes of the various companies, and in referring to New England competition and New York State competition and the like, you made some kind of calculation, or gave us some kind of statement or conclusion based on allocating portions of a carrier's total routes and the portion of his routes that were in New England or in New York. Is that what you did?

A. No. As I recall that calculation, it assumed that if a carrier had routes outside of New England, that those routes would bear the same portion of the revenues, the total revenues, of that company. But the revenues are not shown in a segregated 1534 manner in the reports. They are revenues for the total system. So there is no way of allocating these revenues along any territorial lines. It is certain, if the extensive lines reported less than the area under consideration, that those lines have contributed to the total revenue of the company.

Q. You made such an assumption, did you not?

A. That is a reasonable assumption.

Q. I would not be arguing with you if I thought it was reasonable. I just asked you if you made it.

A. Yes. The answer is "yes."

Q. And your testimony along those lines was based on that assumption? Your testimony as to how much a line was competitive in New England when it had routes running all the way across New York and out to the midwest states—your conclusion as to how much it was competitive in New England was based on that assumption, that the freight was proportioned over the routes that it had?

A. No.

Q. Well, you tell us just how you did it.

A. It would indicate that the volume of business as reported would be no measure of the business generally in the area under consideration. That is not to say, however, that it could still not be competitive within the area under consideration.

Q. Then, I will go back, because we are not talking at the 1535 moment about the same thing. How did you determine or what determination was it you made with respect to lines having—like the interstate line, where you said they had a few points in New England and a few points in New York, and that most of their business was in the middle west. What is that you told us about that situation?

The WITNESS. May I refresh my memory on that, Mr. Examiner?

Exam. BAKER. Yes.

The **WITNESS**. I would also like to make this observation, that obviously many of these names and much of the data that we have brought together are relatively new, and I cannot attempt to recite them from memory. I have tried to put them down accurately and concisely and honestly in what I have said, and have done it when I had the facts before me. I cannot labor myself to the point of trying to remember that. I have not tried to memorize these things.

**Exam. BAKER**. You may refer to the notes.

**Mr. SULLIVAN**. I have no objection to his referring to his notes or to his testimony there. I think it was when you were discussing your Exhibit 24.

**Mr. MACDONALD**. That was not in the prepared statement, Mr. Berquist.

**Mr. SULLIVAN**. Let us let it go if it was not, and I will ask you some questions.

By **Mr. SULLIVAN**:

1536 Q. You made a statement in effect with respect to your Exhibit 24, which listed at the top Interstate Motor Freight System with \$9,000,000, pretty near \$10,000,000 revenue, Keeshin Motor Express Company, Inc., with \$5,800,000 revenue, and Midwest Haulers with \$3,850,000 revenue, that those should never have been listed in the exhibits of the applicant.

**Mr. MACDONALD**. That is not correct, Mr. Examiner. No such statement was made.

By **Mr. SULLIVAN**:

Q. Then, if that is not the statement, what do you say the statement was that you made with respect to those?

**Mr. MACDONALD**. Have the witness answer, or do you prefer that I answer?

**Mr. SULLIVAN**. I don't suppose it makes much difference.

**Exam. BAKER**. The witness may answer that question.

**Mr. MACDONALD**. I cannot see any point, Mr. Examiner, in repeating all the testimony for Mr. Sullivan's benefit. He was here when he testified.

**Exam. BAKER**. Mr. Sullivan wants to know about a statement the witness made.

**Mr. SULLIVAN**. All right, I will do it another way.

By **Mr. SULLIVAN**:

Q. Is Interstate Motor Freight System, in your opinion, a competitor of the Moran Transportation Lines?

A. You are referring to Interstate, Keeshin, and Midwest?

Q. I was, but counsel said I should not, so I just move up 1537 to Interstate. I will take them one at a time.

A. Well, my information on Interstate is that it is a very large general freight carrier blanketing Illinois, Michigan, Wisconsin, and Ohio. In addition it has routes into the east mainly from Ohio originating points. Insofar as its west to east movements through western Pennsylvania into New York, Philadelphia, and Baltimore destinations are concerned, its routes are not competitive. I further said in two local areas it is competitive. One area is the western New York area involving several principal cities. The other area includes three routes from Boston to nearby New England destinations. In addition, it has routes from New York to Albany and Buffalo and to Washington. Insofar as the Moran territory is concerned, this line is competitive in the western New York points, but the bulk of its business obviously is carried on throughout the remainder of its very large system, embracing the states of Illinois, Michigan, Wisconsin, and Ohio.

Q. Will you read what you got next?

A. Essentially this is an east-west carrier and is complimentary rather than competitive to the system which would be set up by the proposed merger.

Q. Will you read the next sentence?

A. To assume that any considerable portion of the gross operating revenue of this company would be competitive is to 1538 make an exaggerated assumption.

Q. Will you read the next sentence?

A. Keeshin Motor Express Company, Inc.—

Mr. MACDONALD, Mr. Examiner, are we merely refreshing Mr. Sullivan's recollection?

Mr. SULLIVAN. He has made the statement that he did not say they should be eliminated.

Mr. MACDONALD: That statement was not made about the first three carriers on that exhibit. That statement was made concerning Trans-American Freight Lines and Motor Express.

By Mr. SULLIVAN:

Q. What was that you said about an exaggerated assumption with respect to Interstate, please? Stick to that.

A. To assume that any considerable portion of the gross operating revenue of this company would be competitive is to make an exaggerated assumption.

Q. What would you say was a considerable portion? How far have you got to get before you make an exaggerated assumption?

Mr. MACDONALD. I think this is specious reasoning, Mr. Examiner.

Exam. BAKER. I think Mr. Sullivan is entitled to ascertain how Mr. Berquist arrived at that statement.

Mr. MACDONALD. I asked him that on direct. I am sure if he will simply ask him how he ascertained it he will answer it.

1539 Exam. BAKER. He may ask in his own manner.

The WITNESS. Well, since it was included in the exhibit, and you see the figures of their operations, one certainly would not assume that all of the revenue derived from its operations was competitive, if they are, as it appears to be, large operators in three or four states in the middle west, or even to assume that 80 percent of it was.

Q. Did you say they were principally an east-west carrier just a moment ago?

A. I said this: Essentially this is an east-west carrier and is complimentary farther than competitive. I think it joins on to the other systems.

Q. You know that the Moran Transportation Lines solicit freight in every point in the State of New York and every point in the west as far as Chicago.

Mr. MACDONALD. I don't think the counsel should be permitted to read that into the record.

Mr. SULLIVAN. Mr. Examiner, I suppose I am entitled to do something here besides paying rent and occupying a chair. Because he comes from the Justice Department doesn't mean that what he says we have got to take.

Mr. MACDONALD. I only objected to counsel testifying.

Mr. SULLIVAN. I am cross-examining, and I have a right to cross-examine him.

Exam. BAKER. Objection overruled. You may answer.

1540 Mr. SULLIVAN. Without a lot of silly objections. What was the question?

(Question read.)

By Mr. SULLIVAN:

Q. Do you know whether that is so or not?

A. I don't know anything about that.

Q. Would it have assisted you in your conclusions to find out whether that was so?

A. I was not endeavoring to testify as an expert witness as to all the details of operation and the methods of operation of this or any other company. I was merely stating what we found to be the official record of the I. C. C.

Q. Did they say anything about any exaggerated assumptions in their official records?

A. No. But I think this is a fair statement, that if we include them in here as being competitive for the full amount of their

operation, that would seem to me, as a reasonable person looking at that, that that was a reasonably large figure to have included in there as inductive as a measure of competition.

Q. Did you understand that the applicant at any time offered any exhibit with the Interstate Motor Freight listed for the purpose of showing that Interstate derived \$9,000,000 of revenue from the territory in which any of the applicant companies operate?

A. No.

1541 Q. Then, why did you make the statement you made?

Mr. MACDONALD. Mr. Examiner, may I interpose? This witness was not here during the original days of the hearing in this matter, and at that time such an exhibit was put in and the figure of approximately ten million dollars was given as the figure for Interstate without stating that it referred to more points than those shown on applicant's exhibit. This witness cannot answer that question because he was not here and does not know that the exhibit was put in in that form.

Exam. BAKER. Mr. Macdonald, I was rather liberal on the direct examination of this witness. He made what I considered conclusions, but I thought, in the interest of orderly procedure, he should be allowed to go ahead and make the statements, and I feel in the interests of fair play Mr. Sullivan should be allowed to conduct his cross-examination without too many objections and interruptions.

Mr. MACDONALD. Mr. Examiner, I have not intended to put in too many. I only put in objections to questions which I thought were objectionable.

Exam. BAKER. Is it essential from your standpoint of the case that Mr. Berquist not answer the question?

Mr. MACDONALD. He would not be able to answer the question.

Exam. BAKER. I think Mr. Berquist is perfectly capable of taking care of himself to a large extent. If he does not  
1542 know, I am sure he will say so.

Has the question been answered?

Mr. SULLIVAN. Yes.

Exam. BAKER. Proceed with the examination.

Off the record.

(Discussion off the record.)

Exam. BAKER. We will take a ten minute recess.

(Whereupon a short recess was taken.)

Exam. BAKER. We will resume.

Mr. SULLIVAN. I do not recall what we were doing last, but we will move along.

By Mr. SULLIVAN:

Q. Is it your contention, sir, that the Seaboard Freight Lines are in competition with McCarthy and Consolidated in New England? Refer to your work sheets or any notes you have.

A. Seaboard—

May I have the question, please?

(Question read.)

A. Yes, I would say they are.

By Mr. SULLIVAN:

Q. To what extent?

A. Well, the routes served by Seaboard include Boston to Washington, Boston to Worcester to Westfield, Massachusetts, Albany, New York; Norwalk, Connecticut, to Lennox, Massachusetts, Boston, Massachusetts, to New Haven, Connecticut; Springfield, Massachusetts, to New Haven, Connecticut; Stratford, Connecticut, to New Haven, Connecticut; Great Barrington, Massachusetts, to Valatie, New York.

Q. Is that all the routes that Seaboard have in New England?

A. Those are in New England. There were a few others that I did not include which did not appear to be in that area. Philadelphia to Baltimore, New York to Albany, those are the only two routes so indicated.

Q. Did you consider as to whether or not they serve intermediate points along those routes? I mean in your testimony did you consider as to whether or not they serve intermediate points along those routes?

A. I take it they do. The evidence here does not so indicate.

Q. But in your testimony, your direct testimony, did you consider and give weight to the fact that they served intermediate points?

A. I had no other information than this, but I assume they do serve intermediate points.

Q. Well, with the information you had there, would you have considered they served intermediate points?

A. Yes.

Q. So, then, in giving your testimony you considered that they did serve intermediate points?

A. I assume they did; yes.

Q. What about off route points?

A. To where?

1544 Q. To wherever they might have off-route points.

A. Well, I will have to say I do not know anything about any routes except those that are indicated in the report to the Commission.

Q. Well, in making the examination of the Commission's reports did you look to see what off-route points carriers were permitted to serve as part of their regular route operation?

A. These are the routes indicated—all of the routes indicated in the report of the Commission for the end of the year, as indicated in this report. Beyond that I did not go and could not go.

Q. Well, you took that from the report rather than from their certificate?

A. I took that from the report.

Q. There is nothing in the report that requires them to indicate what off-route points they are allowed to serve, is there?

The WITNESS. Might I have that question again, please?

Mr. SULLIVAN. The Reporter will read it.

(Question read.)

A. May I refer to the heading of the report? On page 51, Schedule 9001, Title "Regular Routes Over Which Respondent Operated at Close of Year."

"This schedule should be completed by regular route intercity operators. Mileage reported should reflect the one-way 1545 miles (from point of origin to point of destination) of each route operated. If certain sections of the highway is common to two or more routes, it should be included in the mileage reported for each route."

Now, that is all that is covered by that particular schedule.

Q. So you did not investigate to determine whether or not that is the only service offered by them, or which they are permitted to offer in the New England territory?

A. No.

Q. What principal routes would you say there are in New England that are not covered by the Seaboard operation?

A. Well, I am not in position to name all the routes that there may be—principal routes there may be in New England. I can only cite the routes here indicated.

Q. Did you make any study to determine what routes there were in New England that were not covered by the Seaboard operation?

A. Any study of routes not covered?

Q. Yes. Did you make any study to determine what, if any, principal routes in New England were not covered by the Seaboard operation?

A. Well, I think I indicated generally in my testimony the area covered by Seaboard and if I may refresh my memory on that—

Q. Would you tell me what it was you said? Maybe that is what—

1546 A. I noted in that study when I examined it at the time that it does not serve the northern part of Massachusetts. That is the conclusion I came to by looking at the routes and having a map to observe where they went. That was my observation on that point, that it does not serve the northern part of Massachusetts.

Q. By the northern part of Massachusetts, can you name any city that you have in mind there that they do not serve?

A. Well, generally speaking, it would be that area north of a line drawn west of Boston.

Q. Well, is there any city of any size in New England that Seaboard does not serve?

A. Any city of any size in New England?

Q. Yes; not counting Maine, of course. I mean New England as we refer to it here with respect to the lines in this application.

A. Any particular city that it does not serve?

Q. Yes.

A. I can note whether or not there is any city indicated in their annual report which they do not serve.

Q. You mean you are going to look at the annual report, or notes from it, and what you can tell me is if they name some city in their annual report that they do not serve, then you can tell me; is that it?

A. No. If there is any city that I observed that is not  
1547 named in that report, then I assume, as far as their reporting to the Commission is concerned, they are not serving that in the area indicated, in the northern part. May I have a map? Well, there is no indication that it serves Fitchburg.

Q. Fitchburg is a city? How big a city?

A. Yes; I think Fitchburg is a city. As to its size I could not say with exactitude. I see no indication that it is serving Lawrence or Haverhill, Newburyport.

Q. Those are all up there north of Boston in that little jut of Massachusetts.

A. That is right. Fitchburg is to the northwest. Greenfield, North Adams—none of those points are indicated as points served by Seaboard Freight Lines, Inc., in accordance with their report to the Interstate Commerce Commission.

Q. Well, are those points that are served by lines in this merger, all of those points you named?

A. I note that Fitchburg is. I note that Greenfield is. I note that North Adams is. I note that Pittsfield is.

Q. Wait a minute. Did you name Pittsfield before? Isn't Pittsfield on a Seaboard route as an intermediate points?

A. Yes; it probably is an intermediate point.

Q. And isn't North Adams one of their off-route points?

A. That I don't know.

1584 Q. Well, they have a terminal at what you called Leominster, I believe, on your direct examination.

Mr. MACDONALD. I do not recall any direct examination as to terminals.

Mr. SULLIVAN. He mentioned it in passing as he went along.

The WITNESS. I do not believe I mentioned that in connection with Seaboard Freight Lines, did I?

By Mr. SULLIVAN:

Q. Well, do you know whether they have a terminal there?

A. I did not mention—Leominster, is it?

Q. Yes.

✓ A. In connection with my statement with respect to Seaboard Freight Lines:

Q. Do you know whether they have a terminal there?

A. I do not.

Q. Well, then, except for those three or four or five, whatever it was, cities you mentioned up in the north, is there any principal city in that territory not served by Seaboard?

A. Principal city in which territory?

Q. In the territory with which we are concerned here, the New England territory, involved in this application.

A. I see no listing here for any route to Lawrence or Lowell, Haverhill, Newburyport—

Q. Those are the ones you mentioned before. I said "except for those."

1549 A. Except for those. Well, I can't say that there are a great many more so-called principal cities north of such a line as I indicated east of Boston when you except those cities north of Boston.

Q. No. I said in New England. Other than those cities you named, and within that part of New England which is involved in this application, I asked you if you could name any principal cities that Seaboard did not serve.

A. Well, I see no listing of anything to Manchester, New Hampshire.

Q. Does anybody in this merger go to Manchester, New Hampshire?

A. No. You said north of Boston. I do not know what you mean by that.

Q. Well, I better try again. I asked you, sir, or I intended to ask you, if you could name any city in New England where the companies involved in this merger have a direct service, which city was not also served by the Seaboard Freight Lines.

excluding those four or five cities up around north of Boston that you named.

A. Well, that will require a comparison of what you have included in your map of the points covered by the merger and a notation of whether those points have lines—routes indicated in their annual report; and I suppose if we made a detailed comparison we could find out whether there is or is not such a point.

1550 Q. You did not make such a study?

A. No; I did not. I have listed only what the Seaboard operations covered.

Q. You did not make such a study, though?

A. No.

Q. And you did not make that with respect to any other part of the territory that we are discussing?

A. It was a point by point study of what was covered by the Consolidated Lines and all of the points indicated in the other lines that we have referred to.

Q. That is right.

A. That is correct. I have listed all of the points here for the purposes of any such comparison as could be made, but as to making a study of all possible points and so on, to be able to give you that answer, I did not.

Q. Did you list cities?

A. What is that?

Q. Did you list cities? When you say "points," what do you mean by points?

A. Well, I mean the points as indicated in the annual reports.

Q. You mean cities?

A. Well, all points.

Q. Towns or—

A. All points. Boston is a city, Norwalk is a city.

Q. But having listed them you made no study?

1551 A. No.

Q. Now, those were what, terminal points, or termini, in the annual report? What did you understand?

A. I understood them to indicate the points between which routes were operated by the carrier as of the end of the year, and that is exactly what the schedule calls for. Beyond that I do not know.

Q. All right. In New York State can you name any principal city not served by Keeshin or Seaboard Lines? You understand, don't you, that Keeshin and Seaboard were both part of the Keeshin Motor Freight System, or didn't you know it?

A. I have gotten my information for Keeshin as Keeshin and Seaboard Freight Lines as Seaboard Freight Lines.

Q. All right. Then, I will ask you, is there any city in New York State of any size, or any city at all in New York State, not served by Keeshin?

A. Off hand I cannot answer. If by comparison I should note that, why, I could tell you.

Q. Do you know whether there is any principal city in New York State to which Interstate does not offer service?

A. I have an awful long list of names here.

Q. Well, you have them listed by states, or something, haven't you?

A. No; they are listed as reported. They are not necessarily by states.

Q. Well, have you only their regular routes so-called?

A. I have got their routes as indicated in the annual report, two pages of them.

Q. That is only their regular routes, is that it?

A. Their regular routes, yes; scheduled service.

Q. You do not know about their irregular routes?

A. There is no indication of irregular routes.

Q. Do you know whether they render such service?

A. I know of no service they render except as that which is indicated here.

Q. Did you make any investigation to find out what the flow of tonnage between any particular point was with respect to any carrier?

A. No, sir. I may add that the records of the Commission do not indicate such breakdown as between points.

Q. Did you make any investigation to determine whether there was any relationship between the number of miles or the number of points in State A and the number of points in State B served by a carrier as to how much of his revenue came from either state?

A. No, sir.

Q. Did you make any investigation, assuming a route between New York City running up to Albany, across to Syracuse, Rochester, Buffalo, Cleveland, and Detroit, to determine how much of a company's revenue, where they operated over that entire route, came from, either New York State or Ohio, or Detroit?

A. No, sir.

Q. Any testimony you have given which might lead to an indication as to division of revenues or tonnage between states or routes was not based on any of the factors I have just mentioned?

A. No, sir. It was just based on the general thought that routes

have been established, and it is indicated that those routes were operated at the close of the year, so obviously both tonnage and revenue of some amount would be derived over each of those routes.

**Q.** And you made no investigation to determine what percentage of revenue might come from regular routes or territorial operations?

**A.** No, sir. There is no breakdown of the figures of that kind given in the Commission's reports.

**Q.** Just a moment, sir. Just one more question and then I will be finished, sir. Could you find in your notes a reference to Middle Atlantic Lines? You said, I believe, that there would be no competition except between Hartford and New York.

**A.** Can you tell me what exhibit that carrier—

1554 **Mr. JOSELOFF.** Applicant's Exhibit 14.

**Exam. BAKER.** Off the record a moment.

(Discussion off the record.)

**Exam. BAKER.** Back on the record.

**Mr. SULLIVAN.** Will you read the question, please?

(Question read.)

**By Mr. SULLIVAN:**

**Q.** Was my statement a correct understanding of what you told us?

**A.** I think that was also included in one of your earlier exhibits. What was the name of that carrier again, please?

**Q.** Middle Atlantic.

**A.** Where did I refer to that in my testimony? I do not seem to find reference to it.

**Q.** Well, I think—

**A.** If I can find that—

**Q.** I don't know. I recall that you said in describing them that they only furnished competition between New York and Hartford, and the question I wanted to ask you after that is: Doesn't something in the Commission's report show that they just built a \$100,000 terminal at New Britain?

**Exam. BAKER.** Well, the Commission's annual report would not show that anyway, I do not believe, Mr. Sullivan.

**Mr. SULLIVAN.** Well, it is a big terminal point for them. He says the terminal point is Hartford. I understood that the  
1555 report would show terminal points.

**Exam. BAKER.** In the description of routes.

**Mr. SULLIVAN.** In the description of routes, yes.

**Exam. BAKER.** Did you indicate you withdrew the question?

**Mr. SULLIVAN.** I withdraw the question. One thing more and we are through.

By Mr. SULLIVAN:

Q. Early in your testimony, I believe it was in connection with Exhibit 4, you referred to having made some tests or cross sections of some of the lines who were not Class 1 lines, and you described some four lines or five—

A. Five.

Q. Which you said represented a cross section. I ask you by what method you got that cross section.

A. Took them just as they came.

Q. Came where?

A. In order, as we found them appearing as not having—Is that with respect to Exhibit 4?

Exam. BAKER. I believe he stated Exhibit 4; yes.

The WITNESS. I do not believe I made any reference to that in connection with Exhibit 4.

By Mr. SULLIVAN:

Q. All right, then, in connection with some exhibit did you make reference to a cross section?

Mr. MACDONALD. You can refresh your recollection by referring to page 4.

The WITNESS. We sampled a cross section of non-Class 1 1556 carriers.

Mr. SULLIVAN. That is what I understood you to say.

The WITNESS. And we listed five, and we took them just in the order in which we found them.

By Mr. SULLIVAN:

Q. I ask you how you got a cross section. What did you do to get a cross section?

A. We got five, and I would say that at the time I was called as a witness that list was being extended as rapidly as could be done to increase, not only the cross section, but to make it complete, and the reason the limitation was placed on five is because time was the factor which held it to that.

Q. Excuse me. Are you finished?

A. Yes, sir.

Q. Will you answer my question?

Exam. BAKER. I believe he answered the question.

Mr. SULLIVAN. I asked him how he got a cross section.

The WITNESS. We took the first ones we came to.

By Mr. SULLIVAN:

Q. The first what?

A. The first non-Class 1 carriers that were included in these exhibits that we came to.

Q. You took the first five?

A. We took the first ones we found we were able to get a report on.

Q. What were the names of those?

A. They were American Freightways Company, the 1557 Albany Highway Express, the Mohawk Valley Transportation Company of Utica, Fairclough Express—

Q. Wait a minute. The Mohawk—

A. The Mohawk Valley Transportation Company of Utica, Fairclough Express, and Heimerl Trucking Corporation. And I may add in that connection that if time permitted, that list would have been extended as far as we were able to do so. The list was in preparation at the time.

Q. You took those from applicant's Exhibit 4, is that right?

A. Yes.

Q. And you are telling us now that you took the first four less-than-Class 1 carriers that you came to on that list?

A. Those that we found reports for.

Q. That you found reports for?

A. That is right.

Mr. MACDONALD. May I interject, for the sake of a correct record, are you referring to annual reports or dockets?

The WITNESS. They are dockets; yes.

By Mr. SULLIVAN:

Q. These are dockets?

A. Yes.

Q. Have you got a copy of Exhibit 4 before you?

A. No; I do not have one here before me.

Q. I will lend you mine. Now, in looking at that again, does that refresh your recollection at all as to what you did, or are 1558 you quite certain you did it the way you told us.

Mr. MACDONALD. Mr. Examiner, may I state that the witness has not testified that he did this himself.

Exam. BAKER. He stated what was done.

The WITNESS. May I state this, that I asked for all they could get of those types of carriers, and other jobs came along to be done, such as an examination of later exhibits, and at the time I was called during this morning I believe a number more had been pulled, because I wanted a more complete list. This is as many as they had. These are the ones they had checked and brought in, and time alone precluded our extending that list, or even completing the entire list.

By Mr. SULLIVAN:

Q. You claimed it was a cross section.

A. Well, call it a segregation, or a sample.

Q. Well, having in mind the method that you tell me you followed, I call your attention in Exhibit 4 to the Albany Highway Express and the American Freightways Company, which are, respectively, the fifth and the sixth from the beginning of the list; then you have none until approximately 49 or 50 carriers later on the list, when you come to Fairclough; then you skip about 15 or 16, and you come to Heimerl; and then there were a great number more skipped before you came to that other carrier, who, incidentally does not appear on Exhibit 4. What was that last one?

A. Heimerl.

1559 Q. No. The one after that you named.

A. No. Heimerl was the last one.

Q. What was the one with an M?

Exam. BAKER. Mohawk.

By Mr. SULLIVAN:

Q. The Mohawk—

A. The Mohawk Valley.

Q. I ask you if you can find the Mohawk Valley anywhere on Exhibit 4. That is alphabetical.

A. It is not on there. I can't account for it, except that it was supplied to me.

Q. You still say you took the first five of the list where the Commission had a docket there and which were not Class 1 carriers?

A. May I state again that the point was to get as many as possible of those, and I may say that undoubtedly a number more now have been done that were done this morning, and the limitation was one of time only. And as far as that goes, the question you are asking me I cannot answer, because I had assumed that the list would be longer, and I have no reason to believe that there was any selection, if that is what you are suggesting, or anything else at all, other than take them as they came.

Q. Perhaps, then, you feel that we should consider your testimony on direct that you had taken, as I understand it, a fair cross section of these non-Class 1 carriers amended by your  
1560 later explanation here.

A. Call it a sample. Possibly that might be better. It was a sample as far as we could go. And may I add I had expected to at the time I was called as a witness to insert an extended list of

the same kind, and I think that list may be prepared in part in rough, but I have not had an opportunity to see it.

Q. But you did not know that when you wrote your testimony?

A. I did not know that would be the case at the time I wrote that, because I did not know it would be available.

Q. You made other corrections in your testimony before you read it?

Mr. MACDONALD. I don't think there is any testimony as to corrections. I object to the question.

Mr. SULLIVAN. All right.

By Mr. SULLIVAN:

Q. Anyway, whatever it is, you think it would be more accurate to call it a sample than a cross section?

A. It is a sample as far as it goes.

Mr. SULLIVAN. That is all.

Exam. BAKER. Any further cross-examination? Redirect?

Redirect examination by Mr. MACDONALD:

Q. Mr. Berquist, will you state whether or not any system 1561 was used in picking out those five non-Class 1 carriers?

Mr. SULLIVAN. I object to that. He can't cross-examine his own witness.

Exam. BAKER. He may answer. Objection overruled.

A. No. My instructions were to look into those and to bring in as many as possible of those carriers so that we might have an idea of what they were like, and as other exhibits came along that we wanted to look at, that had to be set aside, and we got into those, and that is how I happen to have these pencilled notations. They were completed only this morning with reference to later exhibits and this morning also instructions were given to the men who were working in the files of the Commission to continue and add to the list. I wanted to find all I could about other carriers, non-Class 1 carriers, as possible. Time did not permit the completion of that list.

By Mr. MACDONALD:

Q. Mr. Berquist, would you state that that is a representative selection, insofar as you know?

A. As far as I know. I know of no reason why it is not representative.

Mr. SULLIVAN. I object to characterizing it as representative now in view of the testimony we have had on the subject.

Exam. BAKER. Do you move to strike it?

Mr. SULLIVAN. I do move to strike it.

Exam. BAKER. The motion will be granted.

By Mr. MACDONALD:

1562 Q. At the time those five carriers were included in your outline of testimony had any other non-Class 1 carriers been examined?

A. Not to my knowledge; no, sir. In fact, I can say emphatically, there were not, because I asked for more of that type, and there were none.

Q. I ask you to refer to your work sheet on Smith & Howell Film Service, Inc., included in applicant's Exhibit No. 4.

A. All right.

Q. Will you state what type of commodity the carrier indicated on its annual report, as shown on your information taken from that report, this carrier carried?

A. Smith & Howell Film Service, Inc., handled films and associated commodities over irregular radial routes, and the notation given for this carrier: "Special commodities, motion picture films, accessories, amount to \$152,391; periodicals, \$18,021; miscellaneous, \$47,578."

Q. This is the information included by the carrier in its annual report?

A. That is correct.

Q. Wherever in your testimony you stated definitely that a carrier was engaged in hauling a particular commodity, did that come also from the annual reports?

A. Yes.

Mr. MACDONALD. Mr. Examiner, we have one further exhibit, which I might state is a compilation of the state law  
1563 restrictions relating to lengths and weights on motor vehicles operated by interstate common carriers of property. We prepared this exhibit in the interest of having the facts complete on all the elements and facts which are to be considered in this case in the light of the fact that there was considerable testimony and some evidence regarding the type of through service and the limitations upon it and whether it can be accomplished. I would like at this time to have it marked for identification.

Exam. BAKER. The document described will be marked for identification as intervenor's Exhibit No. 25.

(Exhibit No. 25, Witness Berquist, marked for identification.)

Mr. MACDONALD. I might state this is taken from the statutes of the states concerned.

By Mr. MACDONALD:

Q. Mr. Berquist, handing you exhibit marked for identification No. 25, can you identify this exhibit, consisting of two sheets, entitled "State Law Restrictions Relating to Length and Weights on Motor Vehicles Operated by Interstate Common Carriers of Property"?

A. I can.

Q. Was it prepared under your supervision and control?

A. It was.

Mr. SULLIVAN. Mr. Macdonald, I will stipulate that it 1564 may be received in evidence.

Mr. MACDONALD. We have no particular use to make of this exhibit, except we felt it would be helpful to the Commission.

Exam. BAKER. I feel it will be helpful if you develop how the information was obtained and prepared in this form.

By Mr. MACDONALD:

Q. Will you state, Mr. Berquist, where this information was obtained?

A. It was obtained from records of the Commission and checked with the staff of the Bureau of Public Roads.

Q. Were the statutes of the states listed in the left-hand column searched to check the material obtained?

A. That is correct.

Mr. MACDONALD. I offer it in evidence, Mr. Examiner.

Exam. BAKER. Without objection, Exhibit No. 25 will be received in evidence.

(Exhibit No. 25, Witness Berquist, received in evidence.)

Mr. MACDONALD. That is all I have, Mr. Examiner.

Exam. BAKER. Mr. Berquist, just a couple of questions so there won't be any misunderstanding. Is my understanding correct that the testimony which you have given is based entirely upon facts appearing in the annual reports of the Class 1 carriers concerning to which your testimony related?

The WITNESS. Or the dockets of the Commission.

1565 Exam. BAKER. Well, did you generally refer to the dockets of the Commission?

The WITNESS. No. Generally, on all this information that I have stated, and I have repeated time and again, with respect to these companies' routes and the like, those were taken directly from the annual reports for 1940 of the Commission.

Exam. BAKER. And you made no investigation of the actual operations of the carriers?

The WITNESS. No, sir; I did not.

Exam. BAKER. And, as I understand, you do not profess to be an expert on transportation matters; is that correct?

A. I do not, not on transportation matters as herein contained.

Exam. BAKER. And that if you have drawn any conclusions which are not appropriate from the facts set forth in the annual reports, you have drawn those conclusions unintentionally; is that correct?

The WITNESS. Well, they were inferences from the facts, and they were not intended as conclusions of a transportation expert; no, sir.

Exam. BAKER. That is all the questions I have. Witness excused.

(Witness excused.)

Mr. MACDONALD. Mr. Examiner, I notice a typographical error on this exhibit which I want to call attention to. On the 1566 exhibit under the column "Maximum Axle Load" the indication is "W. S." instead of "N. S." in the first line referring to Massachusetts.

Exam. BAKER. It should be "N. S."

Mr. MACDONALD. That is correct. That is indicated in the footnote identifying the symbol.

Exam. BAKER. Do you have another witness?

Mr. WIPRUD. Yes; I have, Mr. Examiner. Call Mr. Brent.

THEODORE BRENT, being first duly sworn, testified as follows:

Direct examination by Mr. WIPRUD:

Will you state your name and address, Mr. Brent?

A. Theodore Brent, New Orleans, Louisiana.

Q. State your business connections, if you will.

A. I am president and director of Coast Transportation, Inc., an inland water common carrier, secretary and director of Mississippi Shipping Company, operating service between Gulf ports and the east coast of South America, and executive vice-president of Louisiana Shipyards, Incorporated, building a shipyard for the U. S. Maritime Commission.

Q. What has been your experience in the transportation field?

A. I have been in the transportation business in various capacities for 45 years, 15 years in railroad traffic departments, 1567 the last 4 of which I was assistant to the traffic vice president of a railroad system of some 18,000 miles; then 3 years as general manager of the New Orleans Joint Traffic Bureau, a shippers organization. After that I was a member of the United States Shipping Board in 1917. From 1918 to 1927 I was Federal Manager of the Federal Barge Lines on the Mississippi and War-

rior Rivers. Since 1927 I have represented shippers and traffic organizations in a consulting capacity. Within this time I was also for 4 years president of an intercoastal steamship line operating between the Gulf and the Pacific Coast. The last 10 years I have also been building up my own line of inland water transportation and assisting in the building up of the foreign traffic of the Mississippi Shipping Company.

Q. With reference to your representation of various shippers and traffic organizations, did you make traffic studies, prepare exhibits, and testify before commissioners and courts?

A. Yes; I have.

Q. In your experience in the transportation field have you had any connection with motor carriers?

A. Yes. My association with motor transportation has been that of a common carrier by water in securing joint relations with motor carriers in the southeast. The Coast Transportation Company has today joint rates with a number of southeastern motor carriers. In these negotiations I have had to familiarize  
1568 myself in a general way with that character of transportation and its advantages and problems.

Q. Are you appearing here, Mr. Brent, at the request of the Anti-Trust Division of the Department of Justice?

A. Yes.

Q. In what capacity?

A. As a witness for the purpose of giving what assistance I can to the Commission in making a finding, based upon my experience and my observations as to the possible effect of the merger upon competition and the public interest.

Mr. SULLIVAN. May I ask, Mr. Examiner, that the witness be required to speak up?

The WITNESS. I am very sorry. I am somewhat nearsighted.

Mr. SULLIVAN. I have a deaf friend back here.

The WITNESS. I will try to do that.

By Mr. WIFEUP:

Q. Mr. Brent, are you familiar with the applications of Associated Transport, Inc., seeking authority to merge a number of common carriers of property by motor vehicle along the Atlantic seaboard extending from the New England States to New Orleans?

A. Yes. I have familiarized myself with them as well as I could in the rather short time.

Q. From what standpoint have you studied these applications?

A. From the standpoint of the movement of traffic by common carrier motor vehicle under existing conditions and the probable effect of the proposed merger thereon; also

1569 the extent of competition which presently exists between motor, rail, and water carriers in this area; and finally the extent to which such competition might be limited as the result of the present merger.

Q. Will you now state the result of your studies as to the competitive situation between water carriers and truck lines serving points involved in this proceeding?

A. The only important traffic which would appear to be competitive between coastwise water lines and the motor carriers here involved is that between New York on the one hand and New Orleans, Mobile, and Pensacola on the other. While there are some joint through rates by motor truck between New England and New York on the one hand and Pensacola, Mobile, and New Orleans on the other, the rates by water are so much lower that freight would move by truck only in extreme emergency where price is not the consideration. An examination of the contentions of the applicant and the testimony of traffic witnesses demonstrates that the lines to be merged concern themselves only with long-haul traffic between New York and New England on the one hand and points in Virginia, Tennessee, the Carolinas and Georgia in the south on the other. In this area there is no all-water competition to truck lines serving points involved in this proceeding either through the South Atlantic or Gulf ports.

Q. State what the competitive situation is as between 1570 rail carriers and the truck lines serving points involved in this proceeding.

A. In past years the railroads handled substantially all of this business, but their influence is growing less year by year as the trucking business grows. This is also true of the rail-and-water services operating through Norfolk and Portsmouth, Virginia, or Savannah. A system of differential rates less than all-rates attracts some business where price is more important than service. One of the prime advantages of the truck lines, however, is their lower minimums which enable the distributors to ship smaller quantities to given destinations than they are required to in order to get the benefit of the railroads' volume rates, the minimums of the railroads generally being three or four times greater than the truck minimums. The best evidence of the growing competition of truck lines from the railroad standpoint is the extent to which the railroads have been compelled in recent years to put in pool car arrangements by which a shipper who controls the routing can consolidate in one car the shipments of many consignees and get the benefit of carload rates somewhat lower than the merchandise rates of the truck line. The record of shippers' testimony speaks of the distribution of tonnage as running as high

as 80 percent to the truck lines and 20 percent to the competing  
railroads, a situation which didn't exist at all 15 years ago  
1571 when the railroads had an absolute monopoly of this business. In other words, the superior service of the trucks is gradually taking the bulk of both north- and south-bound merchandise traffic, that is, that which was formerly considered as less-than-carload business moving generally at class or column rates.

Q. Is it your opinion, then that the railroads will become a lessening influence as a competitor in this area to motor truck common carriers?

A. I think it is inevitable if for no other reason than the difference in the capacity of the standard equipment. A motor carrier places its minimums at from 5,000 to 10,000 pounds, and also takes a very great deal of any quantity business. The standard box car of the railroads today, which is the only suitable vehicle for the carriage of this character of freight has a capacity of 30,000 to 80,000 pounds. The railroads cannot afford to use this large equipment to carry 5,000- to 10,000-pound loads, therefore they must necessarily consolidate small shipments at depots involving truck hauls at both ends of the line. Various schemes have recently been tried out to obviate this difficulty, such as the Chicago Great Western's arrangement for carrying semi-trailers on flat cars over a part of the route of a competing motor carrier, and the efforts of such lines as the New York Central to use so-called containers handled on flat or gondola cars. None of these arrangements offer the facility for fast service with  
1572 comparatively small loads which is inherent in the tractor and trailer moved directly over the highway. Since the advent of the motor truck industry the railroads have also encouraged forwarders to operate over their lines, reversing their former policy.

Q. Is it your conclusion then that if effective competition for the future is to be afforded the motor lines proposed to be unified in this proceeding it must be found within the motor carrier field?

A. That is my judgment from my experience and observation.

Q. Are there any single line regular route motortruck companies now operating between New York and New Orleans?

A. Not that I know of.

Q. Is there a substantial volume of tonnage presently moving between New York and New Orleans?

A. Yes; a very heavy volume.

Q. How does that tonnage move?

A. By coastwise steamship lines all the way.

Q. Assuming that the proposed merger were approved resulting in a single line carrier between New York and New Orleans, what have you to say about the possibility of traffic between those points moving over such motor line?

A. I don't think it is possible. The length of haul is too great to permit of motortruck transportation being furnished at a rate which the traffic will bear. The best evidence of this

1573 is the fact that during my residence of over 25 years in New Orleans there has always been through rail service and published through rates, yet the railroads have never carried any New York-New Orleans freight except in some extreme emergency where cost of transportation was not a determining factor. From my study of the record in this case there is no serious contention that any such movement of traffic is contemplated or regarded as possible.

Q. Does your answer also apply to the movement between New York and other Gulf ports?

A. Yes. It also comprehends movements between Gulf ports and points in New England and interior New York and Pennsylvania covered by the lines involved in the proposed merger.

Q. In connection with your studies, have you considered the motortruck operations between New York and New England on the one hand and the territory in the southeast involved in the proposed merger on the other, and the public benefits which are claimed will result from the proposed merger?

A. I have.

Q. What is the principal benefit which it is claimed will result to the public from the merger insofar as the New England movement is concerned?

A. So far as I have been able to gather, the proponents hold out the hope of a saving in time of through movement in both directions through the elimination of transfer of the freight at

New York by substituting the operation of through  
1574 trailers, the present system requiring physical transfer of the lading at New York or other interchange points in the New York metropolitan area.

Q. Is it your understanding, Mr. Brent, that such claimed public benefit would apply to the movement between the southeastern territory and the metropolitan area of New York?

A. I have found no such claim and cannot see how it could be asserted. There are several carriers involved in the unification which offer through service between these areas today and there has been no claim that the service over the main routes between these terminals would be expedited by reason of the merger.

**Q.** What have you to say about the other benefits which proponents claim will result if this merger is approved? That is, public benefit.

**A.** The only other benefit which my study leads me to believe would be of advantage to the public is the limitation of claims for loss and damage. This is a benefit which would only result to the extent that additional handling on New England business under present operations is limited.

**Q.** What have you to say about the claimed public benefit which will result from the use of leased wires?

**A.** I do not regard it as of any substantial public benefit whatever. It is simply a matter of comparative costs to the carrier, of a leased wire against long distance calls.

1575 **Q.** What have you to say about the possibility of eliminating the transfer of lading to and from the New England area?

**A.** The record thus far creates the impression to me that there would be a large introduction of through truck service between the New England area and the southeast. This it is claimed will result because a delay of 12 hours and one transfer of lading in the metropolitan district of New York would be eliminated. Some operators claim a saving in time of from 24 to 36 hours. There may be an occasional load to move at volume rates from one shipper to one consignee. Here a through movement eliminating transfer would be of advantage to the public. It is my observation that such movements constitute a very small part of the traffic handled by these lines.

The common carrier trucks have developed a better service than any other form of transportation for the daily forwardings of package freight offered by many shippers at many origins to numerous consignees at numerous destinations. Such service necessarily requires physical transfer en route at one point for concentration and one point for distribution.

In the through truck service between New England and the southeast, New York has become the greatest point of concentration and distribution because most of the trucking lines radiate from there. At New York a great volume of local  
1576 traffic can be combined with through freight to secure the best load factors both in- and out-bound.

Whether this physical transfer can be best handled on Manhattan Island or somewhere else in the metropolitan area is a matter which concerns the lines themselves. From the public standpoint the fact remains that the nature of the traffic is such that the mere merger of these lines will not eliminate the physical transfer or

the time consumed in that operation on the bulk of the traffic between New England and the southeast.

Q. Assuming that it would be desirable for certain shipments by motortruck to proceed through from the southeastern territory to New England points, would such movement in one vehicle be possible today without a merger?

A. Yes.

Q. Explain your answer.

A. The best evidence that such interchange of trailers is possible today is the fact that several of the carriers involved in the proposed merger already have such arrangements both among themselves and with lines not included in the proposed merger in the southeast and between New England and New York territory. The principle obstacle, according to the testimony of the operating witnesses, seems to be the lack of assurance of prompt return of the vehicle. There is the added objection that sometimes 1577 the connecting carrier has a surplus of trailers of its own and prefers to handle the freight over its portion of the through line in its own equipment rather than pay its competitor for the use of a trailer which it does not need. The testimony in this case clearly shows that where the traffic requires through trailer service in order to use motortrucks these objections have been overcome and arrangements have been worked out. In every industry involving services to the public requiring a great deal of physical equipment there has been a troublesome period during which standardization of equipment has had to be worked out. The trucking industry seems to be in this period. This is a broad question which effects the public interest in transportation and to attempt to solve it by the merger of capital assets of eight major motor lines, as here proposed, it seems to me, is a feeble approach to a great problem of national importance. Certainly, it should not be the ostensible reason for a merger of competing truck lines.

Q. Have you considered in connection with your studies of this application the competitive situation in the motor carrier field in the area involved in this proceeding, and the effect of the proposed merger thereon?

A. I have.

Q. Will you state the result of your studies in this regard?

A. I must say that my studies have been fragmentary because of the lack of time. Other than a cursory examination of 1578 the Commission's records and tariffs, I have had to rely a good deal on my own experience in the matter of competition.

The merger will involve a substantial reduction in competition. Associated Transport, Incorporated, proposes to combine the

services of eight common carriers operating over some 10,000 miles of public highway. Over half this highway mileage the merger itself will have the effect of eliminating competition between two or more presently operating independent carriers. In every territory served by the merged lines certain competitive lines will be left. However, these lines are disconnected segments. For example, there are a number of local lines operating in the Carolinas and Tennessee. Many of these compete for traffic between certain points in this area served by the merged lines. Then there are 30 Class 1 common carriers operating between the Carolinas and Tennessee, on one hand, and interchange points north of the Potomac River, on the other hand. Some of these have a limited territory of concentration and distribution in the south. A number of them serve but one or two origins. Again, in the area north of the Potomac River in Pennsylvania, New York, and New England there are a large group of Class 1 common carriers having a considerable area of distribution individually. At present the carriers in these several groups form through routes and are parties to numerous published joint rates between the areas in the north and southeast served by the 1579 carriers in the merger. Today all of these individual lines can compete to a certain extent for through traffic. If the merger is authorized, their ability to compete will be very much reduced.

The only way by which the competitive situation could then be equalized would be by further mergers of these disconnected segments into a competing carrier of comparable size. However, particularly in New England and New York, very little opportunity for such an additional merger would be offered, as the coverage of the lines here proposed to be merged is so extensive that no comparable consolidation could be effected. If the proposed merger included only the lines of Consolidated north of the metropolitan district of New England and New York State, it would be very extensive. However, when McCarthy in New England and Moran in New York are superimposed on Consolidated, it makes a combination so extensive that there is nothing comparable in either New England or New York which might serve as a nucleus of a competing through carrier. This is perhaps, in my judgment, one of the greatest objections to the proposed merger.

Each of the eight lines included in the merger has largely grown to its present size by the gradual acquisition of lines extending into new territory; what might be termed an end-to-end consolidation. Here we see these eight lines welded into a unit, which, as we have shown, is not essentially an end-to-end consolidation, but a putting together of competing lines which when thus embodied leaves little opportunity for the public to enjoy

real competitive service outside of the merger. The extensive coverage of local territory of concentration and distribution in the north and southeast will give the merger a tremendous power to attract traffic. The inevitable result must be to force out of business numerous competitors who do not have access to any comparable territory.

Q. Would this proposed merger, if approved, have any effect upon the interchange of motor carriers not parties to the merger?

A. I think it would.

Q. What would be the effect?

A. The parties to the merger in the northeastern area would have routes of their own leading into the entire southeast and it would obviously be against their interest to interchange with competing carriers. In the reverse direction the very deliveries by these competing carriers outside the merger of freight to the carriers in New England, parties to the merger, would give to the solicitors of the merged lines information necessary to solicit future business of carriers outside the merger. The inclusion of both Consolidated and McCarthy, the dominant New England carriers, in the merger would, as I have stated, leave to these independent southeastern lines no comparable motor carrier agency in New England with which to interchange freight.

1581 Q. In order to determine the extent of the effect upon the public interest of the merger of strong competing lines, such as Consolidated and McCarthy in New England and Consolidated and Moran in New York, what in your opinion would be necessary to enable the Commission to make a finding thereon?

A. It would be necessary that all of the motor lines interchanging freight in the Metropolitan area of New York and at Philadelphia, both those in the merger and those left out, to furnish the Commission with the tonnage received from and delivered to each connecting line in New England and New York State for a representative period. No such information is to be found in the record. The general statements which the record contains are fragmentary, and of no real value. It would be difficult for the Commission to make a finding as to the effect upon this competitive situation without this information.

Q. From your studies, Mr. Brent, what motor carriers should submit such information?

A. Well, in the first place, it should include Horton, Bargwell, and Southeastern, among the lines to be merged, and the outsiders should be The Mason & Dixon Lines, Inc.; Brooks Transportation Company; Great Southern Trucking Company; Roadway Express, Inc.; Akers Motor Lines, Inc.; Atlantic States Motor Lines,

Inc.; E. T. & W. N. C. Motor Transportation Company; Baltimore Transfer Company of Baltimore City; Rutherford 1582 Freight Lines, Inc.; Novick Transfer Company; Overnight Motor Transportation Company; The Transport Corporation of Virginia; Harris Brothers Transfer Company; Mundy Motor Lines; Super Service Motor Freight Company; Miller Motor Express Company; Preston Trucking Company, Inc.; Central Motor Lines, Inc.; Carolina Freight Carriers Corporation; A. A. Highway Express, Inc.; Lewis and Holmes Motor Freight Corp.; Frederickson Motor Express Corp.; Smith's Transfer Corporation; Colonial Motor Freight Line; Atlantic Coast Freight Lines, Inc.; East Coast Freight Lines, Inc.; C. Warren Falwell, Jr.; Lynchburg (March Trucking); Cochrane Transportation Company; and R. C. Motor Lines, Inc. These are the outside lines Class 1 carriers, which operate between the Carolina and the Tennessee territory and the metropolitan district of New York, and some have interchange at Philadelphia.

**Q.** Mr. Brent, if there are some other carriers you have included in that list that do not interchange at either New York or Philadelphia, would interchange information as far as they are concerned be helpful to complete such a picture?

**A.** For example, Akers Motor Lines does operate all the way through to Boston, but they also have an interchange—I am quite sure they do have—at the metropolitan district of New York, and their interchange would be interesting, as well as all the rest of them.

**O.** Insofar as E. T. & W. N. C. Motor Transportation 1583 Company, which does not touch the Philadelphia or New York area is concerned, their interchange in that territory would be of importance in determining the effect on competition?

**A.** No. It would be only those that reached the junctions. They should be stricken because they obviously do not reach above the Potomac River.

**Mr. WIPRUD.** Mr. Examiner, that is all I have of this witness. I have a motion in this matter. If the Examiner would like that I wait until the witness is cross-examined, I will present the motion then.

**Exam. BAKER.** I think it would be preferable to proceed with the cross-examination.

**Mr. WIPRUD.** You may cross-examine.

Cross-examination by Mr. SULLIVAN:

**Q.** You live in New Orleans, sir?

**A.** Yes.

**Q.** Did you come up north for this hearing?

**A.** For this and other purposes.

Q. And when did you arrive?

A. Well, I think it was Thursday night a week ago.

Q. The other purposes you came up on had to do with the matter of contracts with the government?

A. Somewhat, yes.

Q. Were you subpoenaed by the Department of Justice?

1584 A. No.

Q. How did they obtain your services?

A. They asked me to serve, and I said I would serve.

Q. Are you a friend of somebody over there?

A. Not particularly. I knew Mr. Wiprud, and I know Thurman Arnold.

Q. Did they request that you—

A. They requested me; yes.

Q. Did you ever testify for Mr. Wiprud as a transportation expert in any of his Greyhound cases?

A. No, indeed.

Q. When did you write your testimony?

Mr. WIPRUD. Now, Mr. Examiner, I do not think that is proper cross-examination.

Exam. BAKER. I do not know what this is going to develop. He may continue.

A. I worked this out during the period of the last week. I think it was all finished up about last Friday—no, Thursday, because the hearing began on Friday, and I have not done any writing since, as I recall.

By Mr. SULLIVAN:

Q. You arrived north on Thursday, you said.

A. A week ago.

Q. A week ago last Thursday.

A. Yes.

Q. So you spent a week working on it?

1585 A. About a week.

Q. Pardon?

A. That is all the time I had.

Q. Did you have the testimony all during that time to work from?

A. A good deal of the time, not all of it. Others were working on it.

Q. Others were working on the testimony, you say?

A. Yes.

Q. Were you working with other persons?

A. Mr. Berquist, for example, had the record for part of the time, yes.

Q. Were you working with him?

A. Working in the same office, not with him. I was interested in the exhibits which he was preparing. They had to form the basis of a good many of the studies that I made, and I used the same material.

Q. Are the conclusions you gave us here based, at least in part, on the exhibits prepared by Mr. Berquist?

A. The statements I made are not so much made upon his exhibits as upon the work sheets which were made from the annual reports of the carriers to the Commission. Those I went over just as far as I could individually.

Q. That is, his work sheets, not the Commission's reports?

A. Oh, yes. That is right. I went to the Commission's 1586 reports a little bit, but I did not have time for much of it.

Q. Can you name any companies you looked up in the Commission's reports?

A. Yes. I looked up Transportation, Incorporated.

Q. You mean—

A. The former proceeding in which 28 carriers were involved.

Q. And what of value did you gather from that that aided you in reaching the conclusions you reached here?

A. Well, I don't know that I got very much, to tell you the truth. All I did get out of it was the maps of the 28 lines. I did not get very much out of it. There was not very much in it that I could see that told very much about the competitive element.

Q. And your testimony as you have given it here today is based upon the testimony as it was before we continued after the adjournment; is that right? That is, the testimony as it was given up to last Friday?

A. Yes. I did not get to examine the later exhibits at all.

Q. Or to hear the later testimony or to read it?

A. I did not.

Q. You did not hear any of the testimony given yesterday and today by some of the intervening truck lines from the south?

A. Not a bit of it.

Q. Were you ever in the transportation business in the New England or the New York territory?

1587 A. You mean as a carrier or an employee of a carrier?

No.

Q. Well, any other way were you in the transportation business there?

A. Not in the business, but I have been connected with rail carriers that did business in and out of New England, and I have had working knowledge of the rates and transportation routes all the way back to pretty near the beginning of the century.

Q. Is any of the material which you used or adopted in your direct presentation here taken from any of the pamphlets, studies, or findings of the American Association of Railroads?

A. No. I do not know that I have ever read any of their pamphlets.

Q. When you were connected with the railroads?

A. We did not have the Association of American Railroads at the time.

Q. Well, did you write any pamphlets that they might use?

A. I don't think so. They don't particularly agree with my stuff. We have probably very little in common.

Q. If there is an improved service offered here as a result of this merger, do you feel the shippers would be entitled to have it?

A. Yes, I do; but my point is that it does not require a consolidation of the capital assets or management to secure those improvements.

1588 Q. How would you do it?

A. Just as the railroads have done it for years.

Q. You just got through telling us how badly the railroads do when it comes to competing with the trucks, didn't you?

A. Well, not in that respect.

Q. Have the railroads improved any since you were with them?

A. Well, I would say that they had improved quite a good deal.

Q. They followed the same methods you did?

A. I was merely an employee.

Q. Well, everybody that runs a railroad is an employee.

A. In other words, I was not an executive. I was not in an executive capacity. I was merely assistant to the vice president. I had no executive authority.

Q. You say the railroad people do not generally agree with your ideas?

A. No. They do not particularly like the fact that I am in the water transportation business. I am a competitor; therefore we do not see as much of each other as we used to in former years. I don't know that they have anything against me or I against them.

Q. Have you any proposed improvements contemplated with respect to water transportation?

A. No. We operate through conferences and through rate associations just exactly as the motor carriers do, and we have many interchange arrangements, some of them by which  
1589 equipment of one line goes forward over the other, and those arrangements are common, so common in the railroad business that they are universal. So I am not unfamiliar with working out those arrangements. Therefore, I say it is not necessary to consolidate the capital assets into a great big merger.

Q. You think the situation is comparable between one truck line changing equipment with another truck line and two railroads changing?

A. Certainly.

Q. How about the financial stability of two lines interchanging equipment?

A. What about? How do you mean? What do you mean by that?

Q. Well, should a company with equipment costing \$3,000 per trailer and with a sound financial position and considerable net worth transfer its bodies with a company that in turn turns over a piece of equipment costing \$500, having no sound value, only the minimum amount of insurance required by the Commission? Would you, if you were running the larger company be willing to exchange with that company your valuable equipment?

A. I would, of course—

Q. Of course you would?

A. I would, of course, allow myself the opportunity of considering its financial standing, and if I were not satisfied with it I probably would not make the arrangement. There is  
1590 nothing compulsory between truck operators. One line can't force another into it.

Q. When would you expect the trucking industry, even these 8 individual companies proposed to affiliate here by themselves under facts and conditions as they are today, would require a revamping of the situation so that they would have sufficient standardization to have interchange of bodies a hundred percent as between territories?

A. Well, now, in the first place, I don't think by any means it requires interchange one hundred percent. I know that is not true of any other carrier. If it included interchange about 25 percent, in my judgment, would be quite large. But when you begin to ask me what a large amount of money would have to be spent in order to get at this through service, I answer you that I do not see that any large amount is necessary to be spent. Standardization of railroad equipment did not come overnight, and standardization in my judgment is not absolutely necessary. One man may do better with a small body for a five-ton load than to have all of his equipment great over-the-road carriers. He wants all kinds. It does not seem to me there is any large amount to standardization necessary, except in a few essentials, just as it has been in the railroad business. You have standardized your fifth wheel, and your light connections, and your air brakes. That

is about as far as the railroads have standardized. I  
1591 don't see that it would require such a large amount of money  
to do this, the thing that I am saying, that is of value to  
the public.

Q. And assume one man uses stainless-steel equipment, as Mr.  
Horton does, and another one uses the old type of trailers, that  
are much heavier, and the two companies were not under the same  
financial ownership, would you, if you were Mr. Horton, allow  
your equipment to be exchanged with Moran's, for example, so as  
to bring the through loads in?

A. Well, I presume that I would pick and choose just like Mr.  
Horton does.

Q. So under those circumstances, then, the public would be de-  
prived of this service for a long time, wouldn't they? Probably  
Moran and Horton would never get together, unless Moran had a  
rich uncle.

A. I don't know that the record discloses that, and I am not  
familiar with the great difference that you speak of that exists be-  
tween Moran's equipment and Horton's.

Q. Generally speaking, there is considerable difference between  
the equipment of any of these companies, isn't there?

A. There are differences; yes. Certainly there are. There are  
differences in length, in height, weight.

Q. Cost?

A. Yes.

Q. Type?

1592 A. Yes.

Q. Number of open-top bodies?

A. Just like there is in all the other transportation businesses—  
railroad, barge lines, steamship lines. There is special equipment  
and then there is common equipment. There are certain trucks  
that correspond to a box car. Then there are other trucks that  
correspond to a gondola or flat car.

Q. You want us to run the trucking business like a railroad; is  
that it?

A. I believe gradually, if you are not in too much of a hurry,  
it will work out very well. I think that the general interchange,  
if not forced too fast, will come to be a pretty good system.

Q. What is bad about forcing it fast?

A. Big mistakes are made.

Q. What are the mistakes you see here?

A. You have got a lot of bad equipment. The biggest mistakes  
from the public standpoint, are the efforts to force these things  
through, putting together of the Assets of a lot of separate com-  
panies and refinancing them and putting out more securities than

they can take care of, or can pay upon, throughout good years and bad. That has been the bad thing about the standardization of roads. That is what has happened, and the public has been made to suffer.

Q. Are we talking about the shipping public or the investing public?

A. Well, in that particular instance I was speaking of the investing public. Generally my answers are in respect to the shipping public.

Q. Are you here worrying about the investing public?

A. No; I am not here worrying about the investing public.

Q. Are you here worrying about the shipping public?

A. I am attempting to point out, sir, anything that seems to me to be the probable result to the public, tendering at the request of the Division such observations as I can make.

Q. Did you dictate your testimony yourself?

A. Oh, yes.

Q. Where was it typed?

Mr. WIPRUD. What difference does that make?

Exam. BAKER. I do not think that is relevant.

By Mr. SULLIVAN:

Q. When did you first see your testimony? Was it mailed to you?

A. Oh, no. I did it right in Room 3309 of the Department of Justice Building on Constitution Avenue, every bit of it, and I did it myself.

Q. Every bit of it?

A. Every bit of it. Questions were by Mr. Wiprud—

Q. Pardon?

A. The questions were by Mr. Wiprud; the answers were by me.

Q. Did I understand you to say in your testimony that there was no carrier—no combination of carriers that would be of comparable size to Consolidated and McCarthy, or was it comparable coverage that you said?

A. Comparable coverage. You would have to have a lot of cats and dogs put together.

Q. Are you familiar with the coverage of these companies?

A. From the Commission's reports. I have looked into the routes of all the carriers as far as I could find them that you named in your exhibits.

Q. Don't you know that the Seaboard Freight Lines in and of themselves cover very substantially every point of importance that Consolidated and McCarthy put together would cover in New England?

A. Yes, but—

Q. Are they a cat and a dog—or which is Seaboard?

A. So far as I could find by looking at the tariffs Seaboard have no joint rates into the southeast.

Q. Into where?

A. Into the southeast. They are more particularly interested in business in the other direction.

Q. Well, let us move back a minute. You said it was necessary to put together a lot of cats and dogs to get comparable coverage. I only asked you, after you consider Seaboard, whether it would be necessary, to put them together to get comparable coverage.

1595 A. I think Seaboard as such would be a pretty good connection, but I can't conceive of Seaboard consolidating with any southeastern line. It might—

Q. Well, why can't you conceive it?

A. Well, because I think it is interested in other directions.

Q. What is its interest?

A. More east-west.

Q. You know that it is part of the Keeshin System, don't you?

A. I do. I know it is part of the Keeshin System; therefore I can't conceive of the Seaboard Lines becoming part of a merger of lines that will move into the southeast, and that is what I was talking about.

Q. You feel the lines that move east-west must always continue that way?

A. Well, of course, they might go in bankruptcy and somebody else pick them up.

Q. Because the New York Central runs east-west and another railroad north-south, the Atlantic Coast Line or—

A. It is the transportation way, and if you are owned by a man that expects you to do your business in the east and west direction, you are going to put your equipment to that business and you are not going to be able to fritter it away on any through movement to the southeast, unless it is under common management and control.

Q. With Keeshin-Seaboard-Mason Dixon, for example, 1596 or Keeshin-Seaboard-Mundy, or Keeshin-Seaboard-Brooks, or Keeshin-Seaboard-Akers, or Akers even by himself, if someone offered interchange to cover all the territory with him all the way down, with the rights he has—

A. I don't know where he would get the lines in New England that would be comparable.

Q. He says he has the right now to cover all of New England and all of New York.

A. The right—

Q. He says he has the legal right under his certificate to cover all of New England and all of New York. Would that make a difference in your opinion?

A. Well, he might make a pretty good line for something.

Q. He also told us this morning—and I ask if this would make a difference in your opinion—that the only thing he had against the merger was that it might be possible without the merger to have the opportunity to run a through service to the south which he presently is able to give and which a combination of lines are not able to give.

Mr. WIPRUD. Just a minute. I do not believe that was the testimony of Mr.—

Mr. SULLIVAN. Well, that seems to be the stock objection.

Mr. WIPRUD. No; it is not the stock objection at all.

Exam. BAKER. I will sustain the objection.

• By Mr. SULLIVAN:

1597 Q. Well, let's see. What about the public that you are worrying about? What else are you worrying about the poor public.

A. Well, I do not believe there would be any real competition between this territory and the southeast, because there would be no single line—

Q. Wait a minute. There would be no single line where?

A. Between New England and the southeast.

Q. Well, I just told you, sir, that this man Akers testified this morning that they have a single line from the southeast up into New England, the main points.

A. All right.

Q. Then there would be.

A. There is one small one.

Q. Akers also testified as to more lines.

A. There are a number of lines having, I presume, rights, but they have no connections and no joint rates today, and the limitation of rates over two and three lines which are invariably in the tariffs that are now published, and they are pretty much out of competition. Under the new circumstances there would be one very large and extensive through line from virtually all of Massachusetts, Connecticut, and Rhode Island into virtually all of the important textile and tobacco territory in North Carolina with one line rates. Those are not published in that way by two and three lines. In other words, when you have to go over three  
1598 lines, or even two lines, the rates are usually one class or two classes higher.

Q. So, then, as I understand you, you suggest that we continue to have a two-line haul into the south by these carriers and that that is in the public interest?

A. Oh, no.

Q. Isn't that the effect of your testimony when you spoke about putting them together without merging their assets and liabilities?

A. No. They can do what they please today. They can put in, and some of them do, the one-line rates; but others limit them. And I think they all could just as readily, without merging their assets, with the way they are doing.

Q. What do you say about airplane competition in the south in the next three or four or five years, as long as you are projecting all this into the future?

A. I don't know what will come after the war.

Q. You were projecting this into the future; that before we should be allowed to put these companies together we should wait three or four years to learn each other's faults, learn to love each other like brothers, and do the same things before we act together.

A. Was that a question?

Q. I don't know. About as much question as your answer.

EXAM. BAKER. Any further cross-examination? Any redirect?

1599 Mr. WIRBUD. Just one question, Mr. Examiner.

Redirect examination by Mr. WIRBUD:

Q. Mr. Brent, would these carriers who claim operating rights, in your opinion, have more difficulty in placing those operations over those rights in the event that this merger is approved?

A. Well, frankly, I did not hear the testimony, and I do not know enough of it to say. I would rather not attempt an answer to that question.

EXAM. BAKER. Just a moment. I have one question. You did not refer to the testimony that has been given with respect to reduction in costs of rendering the transportation service. Do you feel that that would be a benefit to the public?

The WITNESS. Well, of course, it might be, but there is not the slightest intimation here that there is to be a reduction in rates. Therefore, I do not see how the public is going to gain from it.

EXAM. BAKER. As a transportation man, is it your opinion that reduction in the cost of rendering transportation service must eventually be reflected in one way or another in the rates?

The WITNESS. If there is plenty of competition, yes; always; but as competition is narrowed it never is done. As you get them larger they absolutely don't reduce rates. They  
1600 stifle any single line that comes into a certain rate group, and an attempt to make rates independently is soon forced

to desist. And so it is as you get them larger they want to hold what they got. It is human nature. We all do.

Exam. BAKER. Well, do you feel that the regulatory power of the Commission over the rates and carriers would have any effect on that?

The WITNESS. Well, of course, Mr. Examiner, it should have. That is the purpose of the regulatory power, I think, to equalize; but I think you and I both know that the Commission is very chary about reducing rates in the face of objection, and I think it would have to be a very strong showing of material reduction in cost to warrant the Commission in making such a finding.

Exam. BAKER. Witness excused.

(Witness excused.)

Mr. WIPRUD. Mr. Examiner, at this time I have a motion I would like to present.

Exam. BAKER. Very well.

#### *Motion*

Mr. WIPRUD. In order to determine the extent of the effect upon the public interest of the merger of strong competing lines, such as Consolidated and McCarthy in New England and Consolidated and Moran in New York, the Anti-trust Division of the Department of Justice moves the Interstate Commerce Commission that all of the common carrier motor truck  
1601 lines interchanging freight in the metropolitan area of New

York, Baltimore, and Philadelphia, including those lines in the merger as well as those left out, furnish the Commission with the tonnage received from and delivered to connecting lines in New England and New York State for a representative period.

The Division, Mr. Examiner, suggests that as a representative period the last six months of 1940 be taken. Now, in addition to Horton, Barnwell, and Southeastern, the motor truck operators from which interchange information should be requested is, in our opinion, those stated by Witness Brent.

Now, in support of the motion the Division submits that under the testimony thus far adduced at this hearing it is clear that the Commission would not be in a position without such information to make a finding on the extent to which competition would be eliminated by this proposed merger. The testimony of independent motor truck operators presently parties to through rates and joint rates and of carriers in the proposed merger demonstrates the manner in which the business through this merger will be forced to a single line, that is, Associated Transport, and

through this diversion the operations of such competition as will be left will be severely weakened. The extent to which the elimination of interchange affects the competitive picture, cannot, as stated, be ascertained from the present record, and until such information is submitted the Division submits that the record is deficient to the extent that no finding can be made thereon. Now—

Well, before proceeding further, Mr. Examiner, I will submit the motion.

EXAM. BAKER. To whom are you directing the motion, Mr. Wiprud, to the Examiner or to the Commission?

MR. WIPRUD. Well, in stating the Commission I am directing it to the Examiner, of course. The statement of counsel here, as well as the witnesses, clearly indicates the importance of this interchange information. It seems to us that this information can be obtained readily by request of the carriers indicated for this period, and I believe that some of the witnesses have indicated that they are willing to supply this information. In fact, one of the witnesses has already supplied some of the information.

EXAM. BAKER. Well, Mr. Wiprud, obviously the Examiner has no power to grant such a motion, to order all the carriers you have named to submit any information. If you desire that your motion remain on the record for action by the Commission itself—the Examiner himself will not act upon it, but if you desire a ruling by the Examiner at this time, I will have no alternative but to deny the motion.

1603 MR. WIPRUD. Well, I suggest, Mr. Examiner, that the motion remain on the record for consideration by the Commission, with the thought in mind that the carriers interchanging traffic at the points stated submit the information, not as to individual carriers, but divide the tonnage as between the lines in the proposed merger and those out of the merger. I think that information would be sufficient upon which to enable the Commission to make some determination as to the effect upon the competitive situation.

May I inquire of the Examiner whether or not it would be in order for him, as a presiding officer at this hearing, to require the carriers involved in this unification to supply this information?

EXAM. BAKER. The Examiner might request such information, but will it be of value to you unless you have the other information for comparative purposes with respect to the other carriers?

MR. WIPRUD. Well, it would be of value, Mr. Examiner, but, of course, it would not be complete without the other information. I believe that the carriers who have appeared here, these independent carriers, have indicated a willingness to present such in-

formation. The Examiner might inquire of Mr. Miller, who represents a number of such carriers whether it would be possible to supply that information.

Exam. BAKER. I will direct my question to applicant's 1604 counsel only. Would applicant be willing to furnish information disclosing the amount of traffic interchanged at New York by the carriers involved in this proceeding?

Mr. SULLIVAN. No; I do not see any reason why we should not do that. My pause was only because I was wondering what the question—does that mean only going into the south or coming back from the south, or any interchange at New York City?

Exam. BAKER. Any traffic at New York. Indicate for each carrier, for instance, for Horton, the amount interchanged there destined beyond New York and the amount received by that carrier destined to other points on his line. Is that what you had in mind, Mr. Wiprud?

Mr. WIPRUD. Did you include Baltimore and Philadelphia?

Mr. SULLIVAN. Now we are getting into something.

Mr. WIPRUD. Wait a minute. Just a moment. I included in my motion those three points.

Exam. BAKER. What is the purpose of including those?

Mr. WIPRUD. Well, because they are important interchange points.

Exam. BAKER. I would only request applicant to furnish information with respect to New York. Is that agreeable to applicant?

Mr. SULLIVAN. That is agreeable. And that was for the 1605 six month period—what period was that?

Exam. BAKER. I would say for the calendar year 1940 would be a more representative period.

Mr. SULLIVAN. That is pretty hard to get.

Mr. WIPRUD. May I say to the Examiner that this information, as I understand it, was in the form of an exhibit. It is not information that should be so difficult to get.

Mr. SULLIVAN. I don't know that we can get all of it, Mr. Examiner. Some of the carriers in the group may not have a breakdown as to points—I think—

Exam. BAKER. Off the record a moment.

(Discussion off the record.)

Exam. BAKER. Go back on the record. With respect to my request, I have no disposition to unduly burden applicant. In view of the explanation made as to the comparative unavailability of the tonnage figures, I will ask that the information requested by given in dollars for the calendar year 1940 for the carriers involved in this proceeding.

Mr. WIPRUD. And for what point, Mr. Examiner?

**Exam. BAKER.** The City of New York.

**Mr. WIPRUD.** Well, now, Mr. Examiner, we would like to state again that the tonnage is the important figure, and I think, so far as the intervening independent carriers are concerned, I am 1606 informed that they are prepared to supply the tonnage figures, and it could be for a more limited period. If a year is a burden on these carriers, why, it might be for a more limited period.

**Exam. BAKER.** How do you feel the tonnage is any more representative of the amount of business involved, Mr. Wiprud?

**Mr. WIPRUD.** Well, I think that the tonnage indicates the volume of movement more than the dollar figure does. And that is what we are concerned with from the public standpoint. That is the deficiency in this record.

**Exam. BAKER.** Well, the tonnage would only indicate that so many tons moved through New York. It would not indicate the amount of the distance of the movement in any way.

**Mr. WIPRUD.** Well, now, Mr. Examiner, in connection with Mason & Dixon, in connection with his testimony, as I recall, you required him to furnish his entire tonnage as a comparison with his interchange tonnage, and that is exactly what we want here. We can get the gross tonnage. And a witness for applicant has been on the stand and testified that they can supply it.

**Mr. MILLER.** Of course, that was the first seven months.

**Mr. WIPRUD.** Well, let us take that, then, the first seven months of this year. That is a representative period.

**Exam. BAKER.** I have to accept applicant's statement—may I ask, Mr. Horton, how much of a job would it be to your company to prepare data with respect to the tonnage inter- 1607 changed at New York during the first six months of 1941?

**Mr. HORTON.** We would only have to go back to the files and pick out about eight hundred thousand manifests and segregate those.

**Mr. WIPRUD.** For 1941?

**Exam. BAKER.** Well, I mentioned for the first six months of 1941.

**Mr. HORTON.** 1941? It would be approximately half that many. Now, we can get the dollars, we keep those.

**Exam. BAKER.** Very well. Thank you, Mr. Horton.

**Mr. WIPRUD.** Mr. Examiner, may I inquire of Mr. Horton here, I believe the testimony of not only Mr. Reicher, but the testimony of his representative—I think it was Mr. Lawson testified that they did have those figures available. He did not have them here, he said, but he had them available.

Mr. HORTON. If he did, I must say he knows something about the figures.

Exam. BAKER. That is sufficient, Mr. Horton. I will adhere to my previous ruling on the subject.

Mr. WIPRUD. Well, now, what is the ruling, Mr. Examiner, may I inquire? Is it limited to New York and to dollars?

Exam. BAKER. That is correct.

Mr. WIPRUD. Insofar as applicants are concerned?

Exam. BAKER. That is correct.

Mr. WIPRUD. And for what period?

1608 Exam. BAKER. I was going to fix a time in connection with all data to be furnished. I will do that now. Any parties who have been requested to furnish data to the Commission should furnish same within 10 days from this day, which would be September 19, 1941. In furnishing that information one original and one copy should be transmitted to the Commission directed to Mr. W. Y. Blaning, Director, Bureau of Motor Carriers, Washington, D. C., attention Section of Finance, and copies of any such data should be furnished to counsel representing other parties to the proceeding.

Mr. WIPRUD. May I inquire, Mr. Examiner, about the period that this interchange data is to cover? Was that the first six months of 1941?

Exam. BAKER. No. The period stated in my original request was for the calendar year 1940.

Mr. WIPRUD. I see. And do I understand that the information requested in the motion from carriers not in the merger will be submitted to the Commission for consideration?

Exam. BAKER. In the normal course of procedure, in the event a proposed report of the Examiner is required, this case would not be submitted to the Commission itself until after service of the proposed report and the filing of any exceptions or other pleadings with respect thereto.

I might suggest that if you desire the Commission itself to immediately act upon such a request as you have indicated  
1609 that it would be better procedure to file a petition with the Commission requesting that they enter an order in accordance with your suggestion.

Mr. WIPRUD. Would the record be kept open to show action on that petition?

Exam. BAKER. I am not sure I understand what you mean.

Mr. WIPRUD. Well, if we have to prepare a petition to submit to the Commission, it would not be in another proceeding; it would be in this proceeding?

Exam. BAKER. Oh, yes; it would be in this proceeding.

Mr. WIPRUD. So that the action of the Commission will be a part of this record.

Exam. BAKER. You may always file a petition with the Commission for any remedy that you feel you are entitled to.

Mr. WIPRUD. Yes; I understand, but I was wondering whether or not the record would be kept open to note the request, and the petition would be filed in pursuance of the request and the action of the Commission on the request.

Exam. BAKER. I am not sure I understand what you mean to imply by "Will the record be kept open." You will be at liberty to file a petition, if that is what you are asking.

Mr. WIPRUD. All right, sir.

Exam. BAKER. And you may refer to anything that you have stated in this record.

Mr. SULLIVAN. The case itself is closed now, as I 1610 understand it, or whenever we adjourn.

Exam. BAKER. Mr. Glynn.

Mr. GLYNN. Mr. Examiner, we do not have any witness to present on behalf of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, but it is desired to make a very brief statement of a factual character and also to point out our position briefly.

First, in speaking for the International Brotherhood of Teamsters—

Mr. SULLIVAN. Mr. Examiner—just a minute. I object to any statement of this sort. I think if they have a witness who wants to go on the stand and subject themselves to cross-examination that that is the proper and orderly procedure.

Exam. BAKER. Mr. Glynn, is your statement going to be on matters of fact or merely a statement of your position?

Mr. GLYNN. It is principally a matter of fact.

Exam. BAKER. Well, I agree with Mr. Sullivan, then, that if you want to introduce facts into this record that you should have a witness take the stand.

Mr. GLYNN. Well, if counsel feels that way about it, I, of course, will have to abide by the decision. I do not have any witness available, but I do think that I do have a right at this time to state that I represent over six hundred thousand employees—

Mr. SULLIVAN. Mr. Examiner—

1611 Exam. BAKER. He may state whom he represents.

Mr. SULLIVAN. Well, is he noting an appearance here?

Exam. BAKER. He has noted an appearance.

Mr. SULLIVAN. Well, didn't that come in at the time he noted his appearance?

**Exam. BAKER.** The name of the organization whom he represented did. If he wants to make a further explanation as to the International Brotherhood, he may do so.

**Mr. GLYNN.** I think it is also proper for me to state that approximately 250,000 of the 600,000 employees that we represent are engaged in interstate and intercity transportation, over-the-road haulers—

**Exam. BAKER.** I feel that—well, go ahead.

**Mr. GLYNN.** Well, now if Your Honor please, I do not want to proceed, as you might say, too much on the ground of propriety. I will just ask if we have an opportunity to file a brief, and also ask that the Examiner make a report and that we be served with a copy of it. Now, if I am permitted to state what our purpose is here and what we expect the Examiner to do in this hearing just briefly, I will be glad to do so, but if I can't, why, we will just put it in the brief.

**Exam. BAKER.** Since you have indicated that you will file a brief, of course, that will be the proper place for any argument you want to make, and there is no occasion to 1612 duplicate that here orally. On the other hand, if you want to introduce any factual matters, of course, you are at liberty yourself to testify.

**Mr. GLYNN.** Well, I would not want to take the stand, because I am an attorney, and I do not have the factual information, the source of it, at hand at all. I do not want to take the stand. I will contend myself with filing a brief.

**Exam. BAKER.** Very well.

**Mr. JOSELOFF.** Mr. Examiner, before the hearing is closed, I would like to amend the application in Docket No. 1613 in this case to state the exact number of shares desired to be issued, as follows:

In lieu of the 700,000 shares of applicant's common stock par value \$1, it is requested that that amount be 880,311 shares; and in lieu of the 60,000 shares of preferred stock par value \$100, it is requested to issue 54,049 shares of preferred stock par value \$100.

Those totals would provide for the conversion privileges of the preferred stock, and would also provide for the additional stock that would result as treasury stock, and the acquisition of the Barnwell Warehouse Company, which would be subsequently cancelled.

**Exam. BAKER.** The application will be considered as 1613 amended accordingly. Do any other intervenors have any testimony to present? Does applicant have any other evidence to present?

**Mr. SULLIVAN.** The applicant has no other testimony that it desires to present.

Exam. BAKER. Will the parties agree that if the Commission desires any additional data to aid it in consideration of this proceeding that it may request the same by correspondence and upon receipt incorporate the same into the record? Is that agreeable?

Mr. SULLIVAN. The applicant agrees.

Mr. WIPRUD. So agreed.

Exam. BAKER. Let the record show that there is no objection. Mr. Glynn has already indicated that he desires a proposed report. What are the wishes of the other parties?

Mr. WIPRUD. We desire a proposed report, Mr. Examiner.

Mr. MILLER. That is our position.

Mr. LACEY. And we also desire a proposed report, and a brief and participate in oral argument.

Exam. BAKER. You are at this time requesting that oral argument be granted?

Mr. LACEY. I think, Mr. Examiner, it would be desirable in view of the importance of this case and the principles that are involved. I do not want to unduly delay this proceeding. I presume it is in the interest to expedite it, but if it 1614 will not unduly prolong the proceeding, oral argument would be highly desirable.

Exam. BAKER. Prior to the recess taken—

Mr. LACEY. Pardon me. May I have this also, that this request is shared in by Mr. Burnette, of the Lynchburg Chamber of Commerce. He had to make a train at six o'clock and he asked that I make the statement on his behalf also.

Exam. BAKER. Prior to the two-week adjournment it was indicated by the parties then present that the allowance of 23 days for the filing of briefs would be sufficient. What is the position of the other parties? What is your position on that, Mr. Lacey?

Mr. LACEY. I did not get the first part. Twenty-three days? I think that is sufficient.

Exam. BAKER. Mr. Glynn, will 23 days be satisfactory to you?

Mr. GLYNN. Well, from where I am sitting I could not hear what the time was.

Exam. BAKER. Would it be satisfactory to you to allow 23 days from this date for the filing of briefs?

Mr. GLYNN. Yes.

Exam. BAKER. Mr. Miller?

Mr. MILLER. Satisfactory.

Mr. WIPRUD. Mr. Examiner, I would like to inquire when 1615 we can get a copy of the transcript of the record. I do not see how in the world we can prepare a brief if we have to wait two weeks for the transcript, or even ten days.

Exam. BAKER. That, of course, the Examiner cannot answer.

Mr. WIPRUD. Well, under those circumstances—we are working night and day as it is to get ready for this hearing, and if the time is to be shortened one week, and it takes ten days to get the transcript, I do not see how we can.

Mr. LACEY. Mr. Examiner, would it be proper to say 23 days from the date the transcript is delivered?

Mr. JOSELOFF. The transcript of most of this proceeding is out already. It is just the last few days.

Mr. WIPRUD. Well, the transcript of the first hearing, but not of the adjourned hearing. We have not seen any transcript of the adjourned hearing. We were told it would not be ready for ten days.

Exam. BAKER. The Examiner will fix October 9 as the date for the filing of briefs. All briefs will be due simultaneously. There will be no reply briefs. If there is nothing further, the hearing is closed.

(Whereupon at 7:45 p. m., September 9, 1941, the hearing in the above-entitled matter was closed.)

1617

*Plaintiff's Exhibit 3**Exhibit 1*

Memorandum of Agreement made this 11 day of June 1941, between Associated Transport, Inc., hereinafter called "Associated," and the others, undersigned, hereinafter called the "Designees."

The Designees are all named as such in various agreements exchanged simultaneously with Associated on June 11, 1941, wherein two-thirds of them are empowered to waive in whole or in part the provisions of paragraph Sixth of each of said agreements.

It is agreed as follows:

First. The provisions of paragraph Sixth of each of the agreements made on June 11, 1941, between the stockholders of the companies listed below and Associated are hereby waived to permit each of said companies to distribute, on or after December 1, 1941, or after approval by the Interstate Commerce Commission referred to in said agreement, whichever is earlier, but in any event prior to the closing date provided for in said agreements, in addition to the compensation or expense allowance provided for in subdivision (3) of paragraph Sixth of said agreements and notwithstanding subdivision (10) of said paragraph Sixth, whether by way of dividends, compensation, expense, or otherwise, up to twenty percent of the net earnings of each said company for the year ending December 31, 1941, before provision for income taxes:

Horton Motor Lines, Incorporated.

Consolidated Motor Lines, Incorporated.

Barnwell Brothers, Incorporated.  
 McCarthy Freight System, Inc.  
 M. Moran Transportation Lines, Inc.  
 Southeastern Motor Lines, Incorporated.  
 The Transportation, Inc.  
 Barnwell Warehouse & Brokerage Company.  
 Conger Realty Company.  
 Brown Equipment and Manufacturing Company.  
 Southern New England Terminals, Inc.

1618 In Witness Whereof, the parties hereto have caused these presents to be signed and sealed, the day and year first above written.

ASSOCIATED TRANSPORT, INC., by B. M. Seymour [l. s.],  
 Exerett J. Arbour [l. s.], John J. McCarthy [l. s.]  
 Mortimer Allen Sullivan [l. s.], H. D. Horton  
 [l. s.], H. N. Barnwell [l. s.], Virgil R. Goode  
 [l. s.], Clifford C. Brock [l. s.], A. Henry, Trustee  
 [l. s.].

1619 EXHIBIT OF PRINCIPAL MOTOR COMMON CARRIERS OPERATING BETWEEN POINTS NORTH OF THE POTOMAC RIVER, ON THE ONE HAND, AND POINTS SOUTH OF THE POTOMAC RIVER, ON THE OTHER HAND, AND PRINCIPAL MOTOR COMMON CARRIERS OPERATING BETWEEN POINTS WITHIN THE SOUTH, AND DIRECTLY COMPETING WITH CERTAIN MOTOR COMMON CARRIERS COMPOSING A PART OF ASSOCIATED TRANSPORT, INC.

1620 Principal motor common carriers operating between points north of the Potomac River, on the one hand, and points south of the Potomac River, on the other hand, and directly competing with certain motor common carriers composing a part of Associated Transport, Inc.:

1. Akers Motor Lines, Incorporated.
2. Atlantic States Motor Lines, Inc.
3. Atlantic Coast Freight Lines, Inc.
4. Baltimore Transfer Co. of Baltimore City.
5. Brooks Transportation Company, Inc.
6. Carolina Freight Carrier Corporation.
7. Central Motor Lines, Inc.
8. Cochrane Transportation Co.
9. Colonial Motor Freight Line.
10. Cooper Motor Express.
11. East Coast Freight Lines, Inc.
12. Harris Brothers Transfer Co.
13. Hooks Motor Line.
14. Horlacher Delivery Service, Inc.
15. Howard Hall Co., Inc.

16. Jack Cole Co., Inc.
17. Kilgo Transfer Company, Inc.
18. The Mason & Dixon Lines, Inc.
19. McLean Trucking Company.
20. Miller Motor Express.
21. Mundy Motor Lines.
22. Novick Transfer.
23. Overnight Motor Transportation Co.
24. Preston Trucking Company.
25. Red Line, Inc.
26. Roadway Express, Inc.
27. R. C. Motor Line.
28. Ross Motor Line, Inc.
29. Super Service Motor Freight.
30. Tidewater Express Line, Inc.
31. Transport Corporation of Virginia.
32. Vance Trucking Co., Inc.
33. Candler Transfer Co.
34. Spotswood Transfer Co.
35. M. D. Hicklin.

1621 Principal motor common carriers operating between points in the south and directly competing with certain motor common carriers composing a part of Associated Transport, Inc.:

36. American Trucking Corporation.
37. A. A. A. Highway Express, Inc.
38. Lewis & Holmes Motor Freight Corporation.
39. Great Southern Trucking Co.
40. New South Express Lines, Inc.
41. Efron Trucking Co. Inc.
42. Smith Transfer, Inc.
43. ET & WNC Motor Transportation Co.
44. Fredrickson Motor Express Corporation.
45. Blizzard Motor Express.
46. Motor Transit Company.
47. Overnite Transportation Co.
48. Rutherford Freight Lines.
49. Lowther Trucking Co.
50. L. H. Bottoms Truck Line.
51. Thurston Motor Lines.
52. Fleming Transfer (Formerly Phillip Greenberg).
53. Karl Lenker.

## PRINCIPAL POINTS SERVED

(8)	(7)	(6)	(5)	(4)	(3)	(2)	(1)	Philadelphia, Pa.	New York City, N. Y.
Fayetteville, N. C.									
Atlanta, Ga.									
Albany, Ga.									
Greenville, S. C.									
Spartanburg, S. C.									
Chester, S. C.									
Asheville, N. C.									
Charlotte, N. C.									
Statesville, N. C.									
Winston-Salem, N. C.									
High Point, N. C.									
Greensboro, N. C.									
Purtilton, N. C.									
Raleigh, N. C.									
Henderson, N. C.									
Danville, Va.									
Roanoke, Va.									
Winchester, Va.									
Richmond, Va.									
Baltimore, Md.									
Philadelphia, Pa.									

Name of Carrier

## EAST-COAST CARRIERS

1. Akers Motor Lines, Inc.
2. Atlantic States Motor Lines, Inc.
3. Atlantic Coast Freight Lines, Inc.
4. Baltimore Transfer Co. of Baltimore City
5. Brooks Transportation Co., Inc.
6. Carolina Freight Carriers Corp.
7. Central Motor Lines, Inc.
8. Cochran Transportation Co.
9. Colonial Motor Freight Line
10. Cooper Motor Express
11. East Coast Freight Lines, Inc.
12. Harris Brothers Transfer Co.
13. Hooks Motor Line
14. Horlacher Delivery Service, Inc.
15. Howard Hall Co., Inc.
16. Jack Cole Co., Inc.
17. Kilgo Transfer Co., Inc.
18. The Mason & Dixon Lines, Inc.
19. McLean Trucking Company
20. Miller Motor Express
21. Mumely Motor Lines
22. Novick Transfer
23. Overnight Motor Transportation Co.
24. Preston Trucking Co.
25. Red Line, Inc.
26. Roadway Express, Inc.
27. R. C. Motor Lines
28. Ross Motor Line, Inc.
29. Super Service Motor Freight
30. Tidewater Express Lines, Inc.

31. Transp. Corporation of Virginia  
 32. Vance Trucking Co., Inc.  
 33. Canler Transfer Co.  
 34. Spotswood Transfer Co.  
 35. M. D. Hicklin

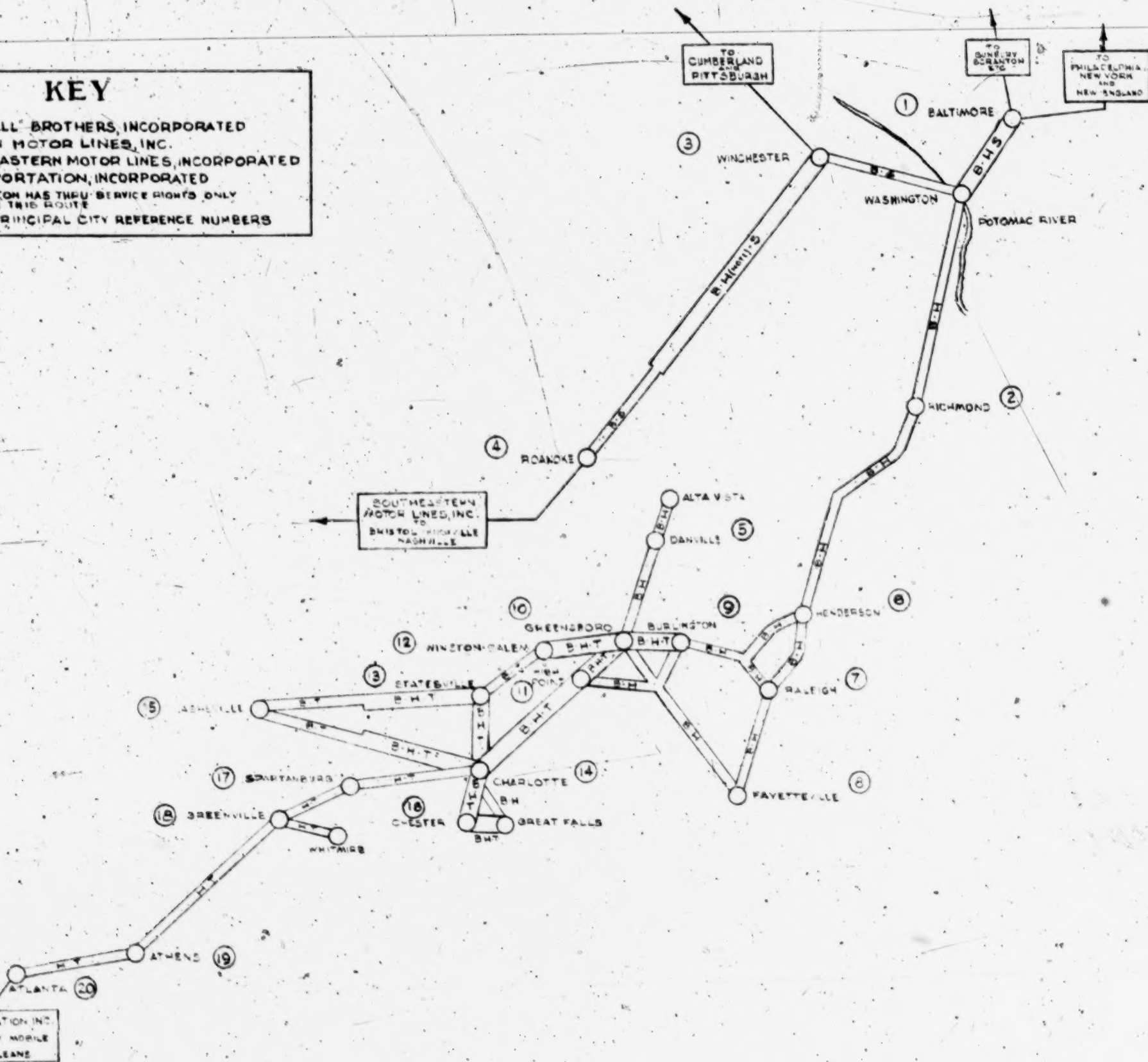
## SOUTHERN CARRIERS

36. American Trucking Corporation  
 37. A. A. A. Highway  
 38. Lewis & Holmes Motor Freight Corp.  
 39. Great Southern Trucking Co.  
 40. New South Express Lines, Inc.  
 41. Efron Trucking Co., Inc.  
 42. Smith Transfer, Inc.  
 43. F. T. & W. S. C. Motor Transp. Co.  
 44. Fredrickson Motor Express Corp.  
 45. Blizard Motor Express  
 46. Motor Transit Co.  
 47. Overnite Transportation Co.  
 48. Rutherford Freight Lines  
 49. Lowther Trucking Company  
 50. L. H. Bottoms Truck Lines  
 51. Thurston Motor Lines  
 52. Fleming Transfer (formerly Philip Greenberg)  
 53. Karl Leuker

Service is not known. Carrier has certificate, including this point.

B: BARNWELL BROTHERS, INCORPORATED  
H: HORTON MOTOR LINES, INC.  
S: SOUTHEASTERN MOTOR LINES, INCORPORATED  
T: TRANSPORTATION, INCORPORATED

NOTE: HORTON HAS THRU SERVICE RIGHTS ONLY  
OVER THIS ROUTE  
THRU 20 - PRINCIPAL CITY REFERENCE NUMBERS



~~MOGAS~~ TRICKING CO., INC., ET AL.

1624

## EXHIBIT No. 3

Before the Interstate Commerce Commission

Re Application of Associated Transport, Inc. For Acquisition of  
Control of Certain Motor Carriers and for the Consolidation  
Thereof

Witness-----

REPRESENTATIVE LIST OF MOTOR CARRIERS SERVING SAME TERRITORY  
AS CONSOLIDATED MOTOR LINES, INCORPORATED, AND MCCARTHY  
FREIGHT SYSTEM, INC., IN MASSACHUSETTS, RHODE ISLAND, CON-  
NECTICUT, METROPOLITAN NEW YORK, NORTHERN NEW JERSEY,  
AND ALBANY, N. Y., CAPITOL DISTRICT

Name and Address of Carriers	Representative Points													
	Albany, N. Y.	Boston, Mass.	Bridgeport, Conn.	Brockton, Mass.	Fall River, Mass.	Hartford, Conn.	Jewett City, Conn.	Lawrence, Mass.	Newark, N. J.	New Bedford, Mass.	New Britain, Conn.	New Haven, Conn.	New York, N. Y.	North Adams, Mass.
A. B. & C. Motor Trans. Co., Inc., <sup>1</sup> Fitchburg, Mass.		x	x			x			x			x	x	
Adley Express Co., Inc., <sup>1</sup> New Haven, Conn.	x	x	x	x	x	x	x		x	x	x	x	x	x
American Trucking Co., Springfield, Mass.			x			x			x		x	x		
Andrews & Pierce, Inc., <sup>1</sup> Boston, Mass.		x		x	x					x			x	
Bay States Motor Exp. Co., <sup>1</sup> Cambridge, Mass.		x		x	x	x				x	x		x	x
Bencon Fast Freight Co., Inc., <sup>1</sup> New York, N. Y.		x		x	x			x	x	x		x		x
Benjamin Motor Ex- press, Inc., <sup>1</sup> Charle- stown, Mass.		x		x	x			x	x	x		x		x
B & E Transportation Co., New York, N. Y.		x		x				x	x			x		x
Berkshire-N. Y. Motor Des., <sup>1</sup> Sheffield, Mass.												x	x	
Berkshire Overnite Ex- press, Gt. Barrin- ton, Mass.												x	x	
Blake Motor Lines, Inc., Torrington, Conn.									x			x		
Bolacks Express, Worcester, Mass.														x
Boston-Buffalo Trans. Co., Cambridge, Mass.	x	x		x				x					x	x
Boston-N. Y. Trans. Co., Inc., Chelsea, Mass.		x		x				x	x			x		x
Boston & Spfld. Des- patch, Boston, Mass.	x					x				x			x	x

<sup>1</sup> Denotes class I motor carriers.

## REPRESENTATIVE LIST OF MOTOR CARRIERS—Continued

Name and Address of Carriers	Representative Points											
	Albany, N. Y.	Boston, Mass.	Bridgeport, Conn.	Brockton, Mass.	Fall River, Mass.	Hartford, Conn.	Jewett City, Conn.	Lawrence, Mass.	Newark, N. J.	New Bedford, Mass.	New Britain, Conn.	New Haven, Conn.
Boston & Taunton Trans. Co., So. Boston, Mass.		x		x	x				x			
Boston & Woonsocket Express, Woonsocket, R. I.		x								x		x
Boston, Prov. & Fall River Ex., New Bedford, Mass.		x		x	x				x			x
C. Bowen, Inc., Boston, Mass.		x						x				
B & S Transportation Co., So. Boston, Mass.	x	x		x				x				
Brockton Transportation Co., Brockton, Mass.		x		x								
E. F. Broderick Co., Inc., New York, N. Y.		x							x	x	x	
Brown & Pollock Mtr. Lines, Bridgeport, Conn.		x				x			x	x	x	
Braz Express Company, Springfield, Mass.												x
1625 Burgess Express Co., Plainville, Mass.		x		x				x	x			x
Cape Cod Overland Express, Brockton, Mass.		x		x	x				x			
Carlson & Company, Manchester, Conn.		x	x	x		x	x			x	x	x
Chief Freight Lines, Syracuse, N. Y.	x	x									x	x
H. Chudnofsky, Chelsea, Mass.		x		x				x	x			x
Capitol Motor Trans. Co., Inc., Boston, Mass.	x	x		x		x			x	x		x
City Truck Co., Inc., Worcester, Mass.		x		x								
Clinton Trucking Co., Clinton, Mass.									x			
Clinton Transportation Co., New York, N. Y.	x		x	x				x	x	x		x
Frank J. Cole, Somerville, Mass.		x										
Colonial Navigation Co., New York, N. Y.		x		x	x				x	x		x
Connecticut Motor Lines, Inc., New Haven, Conn.		x			x	x			x	x	x	
Cook Bros. Trucking Co., Boston, Mass.		x		x	x				x			
Jos. L. Coyle, Boston, Mass.		x		x					x	x		x
Crowe & Company, Waterbury, Conn.		x				x	x			x		
H. B. Church Truck Serv. Co., Roxbury, Mass.		x										

x Denotes class 1 motor carriers

## REPRESENTATIVE LIST OF MOTOR CARRIERS—Continued

Name and Address of Carriers	Representative Points													
	Albany, N. Y.	Boston, Mass.	Bridgeport, Conn.	Brockton, Mass.	Fall River, Mass.	Hartford, Conn.	Jewett City, Conn.	Lawrence, Mass.	Newark, N. J.	New Bedford, Mass.	New Britain, Conn.	New Haven, Conn.	New York, N. Y.	North Adams, Mass.
E. N. Curtis Transport, Inc., Danielson, Conn.		x		x	x	x	x			x				x
D & X Motor Transportation, Lawrence, Mass.		x		x	x			x	x	x			x	
Darcey Transportation Co., Waterbury, Conn.		x	x	x	x	x	x	x		x	x	x	x	x
Devereaux Bros., Waterbury, Conn.						x				x	x			
Dighton Transfer Company, No. Dighton, Mass.		x		x	x				x				x	
Downing & Perkins, Hartford, Conn.			x			x			x		x	x		
Dunham Trucking Company, Springfield, Mass.	x	x		x									x	
Eastern Motor Freight Lines, Plainfield, N. J.		x	x	x	x	x		x	x	x	x	x	x	x
Emmott Transportation Co., Uxbridge, Mass.				x	x			x	x	x		x		x
Fagan Transportation Co., New Britain, Conn.			x			x			x		x	x		
Falman Motor Lines, Inc., Hartford, Conn.			x			x			x	x	x			x
1626 Fall River & New Bedford Ex. Co., Fall River, Mass.		x		x	x					x				
Fast Eight Lines, Bound Brook, N. J.		x		x	x			x	x	x			x	x
Federal Motor Trans. Co., New Bedford, Mass.		x		x	x					x			x	
Fines Motor Transport, Stamford, Conn.			x						x		x			
Finkel Motor Trans. Co., New Bedford, Mass.		x		x	x			x	x	x			x	x
A. J. Finney, Plymouth, Mass.		x		x	x					x				
Fish Transport Company, New Bedford, Mass.		x		x	x			x	x	x			x	
Gableman's Express, Winsted, Conn.									x				x	
Gamache Trucking Company, Fall River, Mass.					x	x			x	x		x		x
Louis J. Gardella Motor Trans., Norwalk, Conn.									x			x		
Gardiner's Express, Springfield, Mass.													x	
Gay's Express, Bellows Falls, Vt.	x	x	x			x			x			x	x	x

<sup>1</sup> Denotes class I motor carriers.

## REPRESENTATIVE LIST OF MOTOR CARRIERS—Continued

Name and Address of Carriers	Representative Points												
	Albany, N. Y.	Boston, Mass.	Bridgeport, Conn.	Brockton, Mass.	Fall River, Mass.	Hartford, Conn.	Jewett City, Conn.	Lawrence, Mass.	Newark, N. J.	New Bedford, Mass.	New Britain, Conn.	New Haven, Conn.	New York, N. Y.
Goodman's N. Y. & Conn. Exp., New York, N. Y.			x			x			x		x	x	
Gordon Bros. Trans. Co., Bridgeport, Conn.			x						x		x		
H & L Transportation, Cambridge, Mass.		x		x	x			x	x				
Hallamors Motor Trans., Brockton, Mass.		x		x				x		x			
Harrison Despatch Company, Lynn, Mass.		x											
Harrison Motor Freight, Hillside, N. J.		x		x	x			x	x			x	
Hartford Despatch & Whse. Co., Hartford, Conn.		x	x	x		x	x				x		
Hartford Transportation Co., Hartford, Conn.			x			x			x	x			
Hemingway Bros. Inter. Tkg. Co., New Bedford, Mass.		x	x	x	x	x	x	x	x	x	x	x	
Hercules Trucking Company, Providence, R. I.		x											
Herschfield Motor Trans. Co., South Norwalk, Conn.			x						x				
Highway Express, Boston, Mass.		x		x				x	x				
Hinch, R. J., Long Island City, N. Y.		x		x				x	x				
Holland Trans. Company, Boston, Mass.		x		x				x					
Holmes Trans. Company, Worcester, Mass.		x	x	x	x	x	x	x	x	x	x	x	x
1827 Huckins & Company, Boston, Mass.		x		x	x				x				
Imperial Freight Lines, Albany, N. Y.	x	x											
Inter-City Trans. Company, Boston, Mass.		x		x	x			x	x	x			
Interstate Magazine Bldg. Co., New York, N. Y.	x	x	x	x	x	x	x	x	x	x	x	x	x
Henry Jenkins Trans. Co., Inc., Boston, Mass.		x		x	x	x	x	x	x	x	x	x	x
Jewett City Trucking Co., Jewett City, Conn.		x		x		x	x						
K-K Golden Arrow Lines, Boston, Mass.		x		x				x	x				
Philip J. Kane, New Bedford, Mass.			x	x									

x Denotes class I motor carriers.

## REPRESENTATIVE LIST OF MOTOR CARRIERS—Continued.

Name and Address of Carriers	Representative Points													
	Albany, N. Y.	Boston, Mass.	Bridgeport, Conn.	Brockton, Mass.	Fall River, Mass.	Hartford, Conn.	Jewett City, Conn.	Lawrence, Mass.	Newark, N. J.	New Bedford, Mass.	New Britain, Conn.	New Haven, Conn.	New York, N. Y.	North Adams, Mass.
E. J. Kelley Com- pany, <sup>1</sup> Torrington, Conn.			X			X				X	X			
Keogh Storage Com- pany, <sup>1</sup> Fall River, Mass.			X	X	X		X			X				
Kling Bros. Trucking, Hamden, Conn.			X						X		X	X		
Kravetz Motor Ex- press, <sup>1</sup> Chelsea, Mass.			X	X				X	X					
L & L Transportation Co., <sup>1</sup> Lowell, Mass.			X	X				X	X				X	
Laramée's Transit Inc., Woonsocket, R. I.		X			X					X				
Lukas Motor Lines, <sup>1</sup> Waterbury, Conn.			X			X			X	X	X			
The Lattin Storage & Truck Co., Bridge- port, Conn.			X						X					X
Laube Interstate Trucking Co., <sup>1</sup> Waterbury, Conn.			X	X	X	X	X	X	X	X	X	X	X	X
Liberty Motor Freight Lines, Secaucus, N. J.	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Longbard Bros., <sup>1</sup> Waterbury, Conn.			X			X	X			X	X		X	X
Lowell Trucking Com- pany, <sup>1</sup> Lowell, Mass.		X	X					X	X					
Lyons Express, Brock- ton, Mass.		X	X											X
M & M Transporta- tion Co., Somerville, Mass.		X	X	X				X	X	X		X		X
M & R Transporta- tion Company, <sup>1</sup> Springfield, Mass.			X	X		X		X		X	X		X	
Mahoney Trucking Company, Bos- ton, Mass.			X	X				X	X					X
Malkin Motor Freight Company, Spring- field, Mass.		X	X	X	X	X				X	X	X		X
Manhattan Transit Company, Roxbury, Mass.		X	X					X	X	X	X		X	X
McCarthy's Express Company, Lawrence, Mass.		X	X					X						X
McCullough Trans. Co., Wm., E. Rutherford, N. J.		X	X	X	X	X	X	X	X	X	X	X	X	X
Mil-Tex Transit Com- pany, Providence, R. I.		X	X	X		X			X	X		X		X
McFarland & Stample Company, <sup>1</sup> New Haven, Conn.			X					X		X	X			
Modern Motor Freight, Inc., Ridge- field, N. J.	X	X	X			X			X	X	X	X	X	X

<sup>1</sup> Denotes class I motor carriers.

## REPRESENTATIVE LIST OF MOTOR CARRIERS—Continued

Name and Address of Carriers	Representative Points													
	Albany, N. Y.	Boston, Mass.	Bridgeport, Conn.	Brockton, Mass.	Fall River, Mass.	Hartford, Conn.	Jewett City, Conn.	Lawrence, Mass.	Newark, N. J.	New Bedford, Mass.	New Britain, Conn.	New Haven, Conn.	New York, N. Y.	North Adams, Mass.
Montour Bros., Inc., Fitchburg, Mass.		x												
Moshassuck Trans. Company, Sayles- ville, R. I.		x	x	x	x	x	x	x	x	x	x	x	x	x
Motor Service Trans. Company, Fitch- burg, Mass.														x
Moulton & Holmes, <sup>1</sup> Boston, Mass.		x	x											
Mullen Bros., North Adams, Mass.	x													
P. B. Mutrie Motor Trans., Inc., <sup>1</sup> Dor- chester, Mass.	x		x	x					x				x	x
National Transporta- tion Co., <sup>1</sup> Bridge- port, Conn.			x			x	x			x	x	x		x
Newburgh Transfer & Storage, Newburgh, N. Y.	x	x							x				x	
New England Carrier Corp., <sup>1</sup> Paterson, N. J.					x		x		x	x		x		x
New England Trans- portation Co., <sup>1</sup> Bos- ton, Mass.	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Nemasket Transporta- tion, <sup>1</sup> Middleboro, Mass.	x		x	x						x				
New London & Bos- ton Trans., New London, Conn.		x											x	
New York & Mass. Motor Service, <sup>1</sup> Springfield, Mass.									x					x
N. Y. & Worcester Despatch, <sup>1</sup> Wor- cester, Mass.									x					
Oates Bros., Shelton, Conn.			x						x		x	x		
George H. O'Brien, Norwood, Mass.	x													
Old Colony Forward- ing Company, <sup>1</sup> Bos- ton, Mass.		x	x	x				x	x	x		x		x
Onondaga Freight Cor- poration, <sup>1</sup> Syracuse, N. Y.	x	x								x			x	x
Orain's Trucking Company, Taunton, Mass.				x										
Perrett & Glenney, South Manchester, Conn.			x			x			x	x	x			
Porter Trucking Com- pany, Taunton, Mass.	x	x	x											
T. Porto & Sons, Wall- ingford, Conn.		x				x	x	x		x	x	x		x
Providence & Spfld. Despatch, Spring- field, Mass.														

<sup>1</sup> Denotes class I motor carriers.

## REPRESENTATIVE LIST OF MOTOR CARRIERS—Continued

Name and Address of Carriers	Representative Points													
	Albany, N. Y.	Boston, Mass.	Bridgport, Conn.	Brockton, Mass.	Fall River, Mass.	Hartford, Conn.	Jewett City, Conn.	Lawrence, Mass.	Newark, N. J.	New Bedford, Mass.	New Britain, Conn.	New Haven, Conn.	New York, N. Y.	North Adams, Mass.
1629 Providence Teaming Company, Cranston, R. I.		x												
Public Auto Delivery, Paterson, N. J.		x		x	x		x	x	x	x		x		x
Puritan Freight Lines, Bridgeport, Conn.			x			x			x		x	x		
Rapid Motor Lines, New Haven, Conn.			x						x		x	x		
Rapid Transportation Company, Brighton, Mass.							x							
Reynolds Bros. Motor Trans., Brockton, Mass.		x		x									x	
C. Rickard & Sons, Bridgeport, Conn.			x						x			x		
H. C. Roulston, Inc., New York, N. Y.			x			x			x		x	x		x
Road's Motor Express, Waterbury, Conn.	x													x
Ruppolo's Express, New Haven, Conn.			x			x			x		x	x		x
Savin's Express, New London, Conn.			x	x	x	x	x		x	x	x	x		x
St. Johnsbury Trucking Company, St. Johnsbury, Vt.		x											x	x
Seaboard Freight Lines, New York, N. Y.	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Shawmut Transportation Company, Brooklyn, N. Y.		x	x					x	x			x		x
Sheridan Bros., Central Falls, R. I.		x	x								x			
H. T. Smith Express, Meriden, Conn.			x			x			x		x	x		x
Summers Motor Lines, Springfield, Mass.		x	x	x		x			x		x	x		x
Standard Express Company, Terryville, Conn.	x	x				x					x	x		x
Stone's Express, Inc., Boston, Mass.		x		x	x			x	x	x		x		x
Superior Freight Lines, Springfield, Mass.									x			x		
Textile Motor Express, Central Falls, R. I.					x		x		x	x		x		x
Tomlinson Bros., New Haven, Conn.			x						x			x		
A. Towle Company, Boston, Mass.		x		x		x		x	x			x		x
Trudon & Platt Motor Lines, Bristol, Conn.						x			x		x			x
Trudon Overland Motor Express, Bristol, Conn.						x			x		x	x		x
Turnpike Motor Trans., Worcester, Mass.		x												x
United Transportation of R. I., Providence, R. I.					x	x			x	x		x		x

1 Denotes class I motor carriers.

## REPRESENTATIVE LIST OF MOTOR CARRIERS—Continued

Name and Address of Carriers	Representative Points															
	Albany, N. Y.	Boston, Mass.	Bridgeport, Conn.	Brockton, Mass.	Fall River, Mass.	Hartford, Conn.	Jewett City, Conn.	Lawrence, Mass.	Newark, N. J.	New Bedford, Mass.	New Britain, Conn.	New Haven, Conn.	New York, N. Y.	North Adams, Mass.	Norwich, Conn.	Pittsfield, Mass.
1630 Utility Freightways, Bronx, N. Y.		x	x					x	x				x			
Valleries Trans. Service, Norwalk, Conn.			x						x				x			
Valley Transportation Co., Uxbridge, Mass.				x	x		x		x	x			x			
G. Vigeant Trucking Company, New Bedford, Mass.		x	x	x						x						
Watt Bros., Central Falls, R. I.					x				x	x			x			
H. P. Welch Company, Somerville, Mass.		x	x	x		x						x				x
West Side Motor Express, Inc., Springfield, Mass.		x														x
White Line Motor Express, Bridgeport, Conn.			x			x	x		x		x	x		x		x
Wooster Express, Inc., Hartford, Conn.		x	x		x	x	x		x	x	x	x				x
Wooster & Taunton Exp., Inc., Worcester, Mass.																x

<sup>1</sup> Denotes class 1 motor carriers.

**EXHIBIT No. 4**

**Witness: J. P. Altwater.**

Name of Carrier	Representative points															
	Albany, N. Y.	Auburn, N. Y.	Batavia, N. Y.	Binghamton, N. Y.	Buffalo, N. Y.	Elmira, N. Y.	Erie, Pa.	Jamestown, N. Y.	New York, N. Y.	Niagara Falls, N. Y.	Olean, N. Y.	Philadelphia, Pa.	Rochester, N. Y.	Schenectady, N. Y.	Syracuse, N. Y.	Utica, N. Y.
A & B Fast Freight	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Acme Fast Freight	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Albany Amsterdam Express	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Albany Beacon Express	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Albany Highway Express	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
American Freightways Co.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Atlantic Coast Freight Lines	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Axe & Arthur Motor Express	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Barnes Trucking Service	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Barth Carting Co.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Bartlett Motor Express	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Batavia Motor Lines, Inc.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Beathys Express	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Benn's Auto Express	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Berger, A. J. Transp. Lines	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Big George Express, Inc.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Bixler & Tagg Express Lines	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Black, Robt. & Sons Trucking	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Bokman Dispatch	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Bolus Motor Lines	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Boss-Linco Lines, Inc.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Boston & Buffalo Transp. Co.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Bowers Transp. Lines	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Boyce Motor Lines	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Brady Motor Freight	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Buffalo & Lockport Trans. Co.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Burns Motor Express	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Byrns Motor Express	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
1532 C. A. B. Y. Transp. Co.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Canny Trucking Co., Inc.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Case Motor Express	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Central New York Freightways	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Chief Freight Lines, Inc.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Circle Motor Express	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Clark Carting	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Coleman Bros. Transp. Lines	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Cook's Motor Express	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Cowan, Inc., W. T.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Cowles Express	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Cross Trucking	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Cruikshank Express	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
D & L Highway Express	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Diamond Motor Express	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Dick's Auto Express	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Diehl's Motor Express	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Dorn's Transportation, Inc.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Drake Motor Express	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

## Name of Carrier

[illegible]

Draper Motor Express  
 Duffy Carting  
 Eastern Express  
 Eastern Freightways, Inc.  
 Elmira Transp. Line  
 Empire State Motors Express  
 Endres Delivery, Inc.  
     Evans Express Co.  
 1633 Fairclough  
     Federal Transportation Lines  
 Filkins Motor Express  
 Finton Delivery  
 Fletcher Express  
 Fred's Express  
 Free Bros. Mtr. Exp. Lines, Inc.  
 George's Motor Freight  
 Gotszman & Newman  
 Gresh's Transportation Service  
 Gordon & Warren  
 Green's Motor Express, Inc.  
 Great Northern Express  
 Greco Bros. Trucking  
 Green's Motor Express, Inc.  
 Hall's Express Service  
 Hamble Bros., Express  
 Harfinger Transfer  
 Harris Motor Lines  
 Hasking Service  
 Heaters Express  
 Heimerl Trucking Corp.  
 Highway Freight  
 Holden's Express Lines  
 Howard Express  
 Hudson Motor Freight Service  
 Ideal Motor Express  
 Intercity Express Lines  
     Inter State Motor Freight Sys.  
 1634 J. J. M. Transfer  
     Kanes Express  
 Ker-shin Motor Express Co.  
 Kendall's Express  
 Krause, John, Motor Freight  
 Kriese's Express  
 Kutins, Charles A.  
 Kulp, J. E.  
 Leaders Transportation Co.  
 Latramo, Motor Express  
 Lake Shore Trawp Lines, Inc.  
 Lawrensworth Motor Express  
 Lee Freight Lines, Inc.  
 Lehigh Trucking  
 Littlefield & Dist. Co.  
 Lightning Express  
 Lincoln Stg. & Carting Co.  
 Lora-Line Motor Freight  
 Lyons Transportation Co., Inc.  
 Martin Transit Service, Inc.  
 Merchants Shippers Assn.  
 Middle Atlantic Transp. Co.  
 Midwest Hauliers  
 Monarch Lines  
 Monroey Bros. Transp. Lines  
 M. C. R. T. Motor Lines, Inc.  
 Motor Express, Inc.  
 Missouri Transportation Co.,

### PARTIAL LIST OF MOTOR CARRIERS—Continued

Name of Carrier	Representative points															
	Albany, N. Y.	Auburn, N. Y.	Batavia, N. Y.	Binghamton, N. Y.	Buffalo, N. Y.	Elmira, N. Y.	Erie, Pa.	Jamestown, N. Y.	New York, N. Y.	Niagara Falls, N. Y.	Olean, N. Y.	Philadelphia, Pa.	Rochester, N. Y.	Schenectady, N. Y.	Syracuse, N. Y.	Utica, N. Y.
1625 National Carloading Corp.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Nestor Bros., Inc.	X			X	X	X						X				
Newell Trucking Co.					X		X	X			X					
Niagara Motor Express, Inc.	X	X	X		X					X			X	X	X	X
Northern Motor Express	X	X	X	X	X			X	X	X		X	X	X	X	X
Onaida Motor Freight, Inc.	X	X	X	X	X			X	X	X		X	X	X	X	X
Omoadaga Freight Corp.	X	X	X	X	X			X	X			X	X	X	X	X
Orange & Black Express, Inc.					X		X	X								
Overland Express	X								X					X		
Penfold, A. G.			X		X									X		
Penn Ohio New York Express			X	X	X	X	X			X	X					
Petrick Express				X	X			X				X				
Porays Express Line, Inc.		X	X	X	X								X		X	
Purdie, N. C., Corp.	X	X	X	X	X	X	X		X	X	X		X	X	X	X
Quester Service			X						X	X						
Radley, Ernest	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Raz Delivery Co.		X	X													
Reddick, Erwin F., Auto Exp.		X			X	X										
Red Star Express Lines	X	X	X	X	X	X		X	X		X		X			X
Rhinervault Trucking Co., Inc.			X	X	X											
Richards Motor Freight Lines	X	X	X	X	X		X	X	X		X	X	X	X	X	X
Riverside Service Corp.					X											
Rochester Forwarding Co.	X	X	X		X				X	X						
Rogers Transportation				X		X									X	
Ruths Express		X											X	X	X	
Ruffalo's Trucking Service, Inc.	X	X	X	X	X	X		X		X			X	X	X	X
S & W Express Lines	X	X	X										X	X	X	
Safeway Truck Lines	X	X	X	X	X	X	X						X	X	X	X
Seahord Freight Lines, Inc.	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X
Selig Trucking	X													X		
Seneca Lines, Inc.						X				X		X				
1636 Shirks Motor Express					X	X			X	X		X				
Smith & Howell	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X
Smith Transportation Lines	X	X											X	X	X	
Spector Motor Service	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Spinella, Rosario	X															X
Stahl's Trucking Co.			X		X					X						
Stanley Transportation	X															
Stanton Motor Express	X													X	X	X
Stibbs Transp. Lines, Inc.	X	X	X	X	X	X		X	X		X	X	X	X	X	X
Stott & Davis Motor Express																
Tanner's Motor Transp. Inc.	X												X	X	X	
Taylor's Motor Express														X		
Thursam Transp. & Stg. Inc.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Tower, Walter, J.	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X
Tracy Transportation Lines	X	X	X					X	X	X	X	X	X	X	X	X
Transamerican Freight Lines	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X
Transportation Lines, Inc.	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X
Tuffey Transportation				X											X	
Twin City Motor Freight	X													X		
Universal Carloading & Dist.	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X
Utica-New York Transportation	X	X	X					X	X	X	X					
Valetta Motor Trucking Co.				X		X			X			X				
Van Transports	X	X											X	X	X	X
Villa, C. T., Carting Co. Inc.			X		X									X	X	X
Vogel, John, Inc.	X	X							X					X	X	X
Vollmer Transportation Co.	X	X							X					X		
Waco Haulage			X		X			X			X	X				
Western Express Co.			X		X		X			X					X	X
Wheeler Motor Express, Inc.			X					X			X	X				
Whinney's Express	X	X	X	X	X	X			X	X	X	X	X	X	X	X
Woodins Express	X	X	X	X	X	X			X	X	X	X	X	X	X	X
Wrights Express															X	X
York Buffalo Motor Express												X				
Young, Wm. Transp. Co.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

CERTIFICATE OF AMENDMENT TO CHARTER OF HORTON MOTOR LINES,  
INCORPORATED

Horton Motor Lines, Incorporated, a corporation organized and existing under the laws of the State of North Carolina, by its President and Secretary, pursuant to authority conferred upon them by the Directors and Stockholders of said corporation, do hereby certify as follows:

I. That on the 28th day of December 1940, pursuant to a waiver of notice duly signed in accordance with the bylaws of said corporation, a meeting of the Directors of the corporation was held, at which meeting all of the Directors of said corporation were present in person, and the following resolution was unanimously adopted:

"Be it resolved: That it is deemed wise and to the best interest of the corporation that its original Charter be amended by striking out the first paragraph of Item IV in its certificate of incorporation, as amended under date of August 11, 1934, and April 5, 1940, and substituting in lieu thereof the following:

"The capital stock of the corporation shall consist of seventy thousand (70,000) shares, of the par value of Twenty Dollars (\$20.00) each, divided into ten thousand (10,000) shares of Class A Stock, ten thousand (10,000) shares of Class B Stock, and fifty thousand (50,000) shares of Class C Stock."

"Be it resolved further: That a meeting of the stockholders of the corporation be called for the purpose of considering and passing upon the foregoing resolution.

1638 "Be it resolved further: That if and when all of the stockholders owning voting stock of the corporation shall vote in favor of said amendment, the President and Secretary of the corporation shall, under the corporate seal and in the name of the corporation, execute a certificate thereof, acknowledged as in the case of deeds of real estate, and shall cause same to be filed, together with the written assent of the stockholders, with the Secretary of State of North Carolina, to the end that the charter of the corporation may be so amended, and upon receipt of a certified copy thereof from the Secretary of State of North Carolina, the said officers of the corporation shall cause same to be recorded in the office of the Clerk of the Superior Court of Mecklenburg County, North Carolina."

II. That pursuant to said resolution, and pursuant to waiver of notice duly signed by all of the stockholders of said corporation, in accordance with the bylaws of said corporation, a meeting of the stockholders was held at the time and place specified therein, at which meeting all of the stockholders of the corporation were present in person, and a resolution was unanimously adopted approving the amendment proposed by the Board of Directors and adopting the resolution of the Board of Directors as and for a resolution of the stockholders of said corporation.

III. That the foregoing amendment was assented to in writing by all of the stockholders of the corporation holding common stock, which assent is hereto attached and made a part hereof.

In witness whereof, Horton Motor Lines, Incorporated, has, on this 7th day of January 1941, caused these presents to be signed in its name by its President, attested by its Secretary, and 1639 has caused its corporate seal to be affixed hereto, all by due authority of its Board of Directors and of its stockholders, at a meeting duly called and held for that purpose.

[CORPORATE SEAL]

HORTON MOTOR LINES, INCORPORATED.

By: H. D. HORTON, *President*.

Attest:

J. A. SUTTON, *Secretary*.

We, the undersigned, being all of the common stockholders of Horton Motor Lines, Incorporated, do hereby give our written assent to the amendment of the certificate of incorporation of said corporation, as set forth in the foregoing or annexed certificate of amendment, signed by the President and Secretary of the corporation:

Name of stockholders	No. of shares
H. D. Horton	8,688
Daisy Eldson Horton	636
Henry Clay Horton	636
Benjamin Stevens Horton	636
J. D. Kluttz	1
J. A. Sutton	1
J. N. Johnson	1
C. A. Cochran	1
J. B. Evans	1
M. B. Speir, Jr.	1
J. D. Lawson	1
B. L. Frazier	1

1640 STATE OF NORTH CAROLINA,

*County of Mecklenburg.*

This 7th day of January 1941, personally came before me, O. P. Roberson, a Notary Public in and for said county and state, J. A. Sutton, who, being duly sworn, says that he knows the com-

mon seal of Horton Motor Lines, Incorporated, and is acquainted with H. D. Horton, who is the President and presiding member of said corporation, and that he, the said J. A. Sutton, is the Secretary of said corporation and saw the said President sign the foregoing instrument and saw the said common seal of said corporation affixed to said instrument by said President, and that he, the said J. A. Sutton, Secretary as aforesaid, signed his name in attestation of the execution of said instrument in the presence of said President of said corporation.

Witness my hand and notarial seal.

[NOTARIAL SEAL]

O. P. ROBERSON,  
Notary Public.

My commission expires Dec. 22, 1942.

Filed Jan. 24, 1941. Thad Eure, Secretary of State.

1641 NORTH CAROLINA,  
Mecklenburg County.

I, J. Lester Wolfe, Clerk of Superior Court of North Carolina, do hereby certify that the foregoing is a true and exact copy of an amendment to the Charter of Horton Motor Lines, Incorporated, as the same appears and is taken from the records in my office in book of corporations 18, page 506 Et Seq.

Witness my hand and seal of the Superior Court of Mecklenburg County, this the 19th day of August 1941.

[SEAL]

(Sgd.) J. LESTER WOLFE,  
Clerk, Superior Court.

1642

Exhibit No. 6

Witness: H. E. Howell.

ANALYSIS OF COMPETITION WITH MCCARTHY FREIGHT SYSTEM,  
INC., AND CONSOLIDATED MOTOR LINES, INC., OF REGULAR ROUTE  
COMMON CARRIERS OF GENERAL COMMODITIES FOR INTERSTATE  
FREIGHT TRAFFIC IN NEW ENGLAND

September 1941

1643

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## 1644 ALPHABETIC LIST OF COMPETING CARRIERS

Carrier name	Address	Code No.
A. B. & C. Motor Transportation Co., Inc.	Fitchburg, Mass.	1
A. & N. Transportation Co., Inc.	So. Portland, Maine	3
Adams Overland Express	Worcester, Mass.	4
Adler Express Company	New Haven, Conn.	1012
Affleck's Moving	Providence, R. I.	7
Alger Bros., Inc.	Somerville, Mass.	12
Andrews & Pierce, Inc.	So. Boston, Mass.	13
Andrews Transportation Co.	New Bedford, Mass.	16
Appleyard's Express Co.	Methuen, Mass.	17
Archie's Motor Transportation Co.	New Bedford, Mass.	18
Aspen Transportation Service, Inc.	West Gardner, Mass.	25
Atkinson Transport, Inc.	Bridgewater, Mass.	27
Atlantic Motor Express	Portland, Maine	28
Atlantic Motor Express	Providence, R. I.	29
W. E. Atwood Truck Service	Somerville, Mass.	30
J. W. M. Auchair Motor Transportation	Manchester, N. H.	33
B. & E. Transportation Co., Inc.	New York, N. Y.	1057
B. & S. Transportation Co., Inc.	So. Boston, Mass.	41
Bachman Motor Line	Bridgeport, Conn.	1011
Bailey's Express	East Hampton, Conn.	44
Barnard's Express	Winsted, Conn.	1027
William C. Barry, Inc.	Somerville, Mass.	53
Bartlett Express	Keene, N. H.	55
Baxter's Express Corp.	Hyannis, Mass.	58
Bay State Motor Express Co.	Cambridge, Mass.	59
Beacon Fast Freight Co., Inc.	New York, N. Y.	60
Beaver Transportation Express	So. Boston, Mass.	63
Bills New York-New Haven Motor Express	New Haven, Conn.	1029
Berkshire New York Motor Dispatch, Inc.		1013
Berkshire New York Overnight Express	Great Barrington, Mass.	1028
Blake Motor Lines, Inc.	Torrington, Conn.	1026
Blue Line Motor Transportation Co.	Providence, R. I.	82
Bolack's Express	Worcester, Mass.	83
Richard M. Boland, Inc.	Lowell, Mass.	84
Borden Express Co., Inc.	Lynn, Mass.	88
Boston & Buffalo Transportation Co.	Cambridge, Mass.	93
Boston & Maine Transportation Co.	Boston, Mass.	94
Boston & Rockland Transportation Co.	Rockland, Maine	95
Boston & Springfield-Dispatch Co.	Boston, Mass.	96
Boston, Bangor Transportation Corp.	Somerville, Mass.	99
Boston, Providence & Fall River Express Co.	Fall River, Mass.	102
Bourne's Transportation Company	Brockton, Mass.	106
C. Bowen, Inc.	Boston, Mass.	107
Bradley's Express	Middletown, Conn.	1030
Brockton Auto Express	Brockton, Mass.	113
Brown's Express	Gardner, Mass.	120
Brown's Express	Pittsfield, Mass.	1014
Brown's Motor-Express	Providence, R. I.	122
Brown & Pollack Motor Lines, Inc.	Bridgeport, Conn.	1030
Burgess Express Co., Inc.	Plainville, Mass.	125
C. & D. Service, Inc.	So. Boston, Mass.	130
C. & D. Transportation Co.	Newport, R. I.	131
1645 Cape Cod Overland Express	Brockton, Mass.	134
Capitol Motor Transportation Co., Inc.	Everett, Mass.	135
Carroll Bros. Express	Millers Falls, Mass.	139

## ALPHABETIC LIST OF COMPETING CARRIERS—Continued

Carrier name	Address	Code No.
Carter Russell & Co	Haverhill, Mass	140
A. L. Cedargren & Son	Brockton, Mass	142
City Truck Co., Inc	Worcester, Mass	155
Clark's Express	Spencer, Mass	156
Clinton Auto Express, Inc	Clinton, Mass	160
Clinton Transportation Corp	New York, N. Y	161
Clinton Trucking Co	Clinton, Mass	162
Cole Teaming Co	Providence, R. I.	174
Connecticut Eastern Motor Lines, Inc	Portland, Conn	1032
Connecticut Motor Lines, Inc	New Haven, Conn	183
Connecticut Transfer, Inc	New Haven, Conn	184
Conway's Express	Pittsfield, Mass	1033
Cook's Transportation Co	Fall River, Mass	187
Cooke's Express Co., Inc	New Haven, Conn	1034
Cooney's Express	Hartford, Conn	1035
Cooper's Express	Lawrence, Mass	188
Craft's Motor Transportation, Inc	Newport, Vt	196
Crowe & Co	Waterbury, Conn	1036
M. J. Curran Co	New Bedford, Mass	205
E. N. Curtis Transportation, Inc	Danielson, Conn	206
D. & N. Motor Transportation Co	Lawrence, Mass	208
Daignault's Express, Inc	Greenfield, Mass	209
Daly's Express	Canton, Mass	210
Darcey Transportation Co., Inc	Waterbury, Conn	1037
Davis & Davis	Providence, R. I.	212
Darlington Express	Pawtucket, R. I.	216
Deehan's Express	Whitman, Mass	225-A
Direct Transit Lines, Inc	Webster, Mass	231
Wm. J. Dobson	Bridgeport, Conn	1039
Dockam's Express, Inc	Stoneham, Mass	235
J. C. Driscoll Transportation Co	Boston, Mass	243
Dufresne Bros. Motor Transportation Co	Shrewsbury, Mass	248
Dunham Trucking Company	Springfield, Mass	250
Dysart's Transportation	Bangor, Maine	252
Eastern Motor Freight Lines	Plainfield, N. J	901
Edward's Express	Attleboro, Mass	261
Edgerton & Sons, Inc	Bridgeport, Conn	1040
Emmott Valley Transportation Co., Inc	Uxbridge, Mass	264
Faiman Motor Lines, Inc	Hartford, Conn	1016
Fall River & New Bedford Express Co	Fall River, Mass	270
Federal Motor Transportation Co	Boston, Mass	274
Finan's Express	Barre, Mass	280
A. K. Finney	Plymouth, Mass	281
Forest City Express	Waterbury, Conn	1017
Frank's Express	New Haven, Conn	292
Ben Franklin Transportation Co	Yonkers, N. Y	294
Froelich Transportation Co., Inc	Stamford, Conn	1018
Gablemann's Express	Winsted, Conn	1019
Garands Express	Newburyport, Mass	296
Louis J. Gardella, Inc	Norwalk, Conn	1020
Gartford Trucking, Inc	South River, N. J	1015
Gasper Transportation Co., Inc	Providence, R. I.	305
1646 Gay's Express	Bellows Falls, Vt	306
Gold Line Express, Inc	Mattapan, Mass	318
Goodman's New York & Connecticut Express Corp	New York, N. Y	1021
Goodman Bros. Transportation Co., Inc	Newburyport, Mass	1022
Graf Bros.	Fall River, Mass	324
Green's Storage Warehouse	Suffield, Conn	331
Greer Bros.	Middletown, Conn	1025
H. S. Express	Providence, R. I.	1024
John H. Haigh	Brockton, Mass	338
Hallam's Motor Transportation	Lynn, Mass	341
Harrison's Dispatch Co	New Bedford, Mass	352
Hemingway Bros., Interstate Trucking Co	Providence, R. I.	362
Hercules Trucking Co., Inc	Dorchester, Mass	365
Highway Express Co	Boston, Mass	371
Holland Transportation Co., Inc	Wakefield, R. I.	382
Holley's Inc	Worcester, Mass	383
Holmes Transportation Service	Wallingford, Conn	384
Hotchkins Express	Boston, Mass	1023
Huckins & Co., Inc	Bridgeport, Conn	360
Hurtzeler Bros. Transportation	Albany, N. Y	1041
Imperial Freight Lines	Brockton, Mass	395
Inter-City Transportation Co., Inc	New Haven, Conn	398
Intra State Transfer Corp	Rensselaer, N. Y	401
Interstate Auto Express	Detroit, Mich	1042
Interstate Motor Freight System		1084

## ALPHABETIC LIST OF COMPETING CARRIERS—Continued

Carrier name	Address	Code No.
Jackson & Sons Motor Express	Pawtucket, R. I.	405
Henry Jenkins Transportation Co.	Mattapan, Mass.	400
Jewett City Trucking Co.	Jewett City, Conn.	411
F. J. Kelly Company	Torrington, Conn.	422
Judd's Express	Ansonia, Conn.	1043
Kennedy's Auto Express	New York, N. Y.	1044
Keogh Storage Co., Inc.	Fall River, Mass.	427
Kirby's Express, Inc.	New Bedford, Mass.	428
Kling Bros. Trucking Co., Inc.	Hamden, Conn.	1045
Kravetz Motor Express	Chelsea, Mass.	433
L. & L. Transportation Co.	Lowell, Mass.	436
Laramie's Transit, Inc.	Woonsocket, R. I.	442
Laskas Motor Lines, Inc.	Waterbury, Conn.	1046
Laube-Interstate Inc.	Waterbury, Conn.	1047
Law & Ingram Transportation Co., Inc.	Nashua, N. H.	448
Lawrence Transportation Co.	Lawrence, Mass.	450
LeFrancois Transfer & Taming Co., Inc.	Woonsocket, R. I.	453
Lewis Express	Northford, Conn.	1048
Liberty's Eastern Express	Wilton, N. H.	460
1647 Lombard Bros.	Waterbury, Conn.	1049
Lowell Trucking Co.	Lowell, Mass.	472
Lyons Express Inc.	Brockton, Mass.	477
McCarthy's Express	Lawrence, Mass.	479
McCarthy's Express	Hartford, Conn.	1050
McCullough Transportation Co.	East Rutherford, N. J.	1082
McGary Transportation Co.	Houlton, Maine	484
M. C. M. Transportation Co.	Newport, R. I.	489
M. & M. Transportation Co.	Somerville, Mass.	491
M. & R. Transportation Co.	Springfield, Mass.	492
Madison Transportation Co.	Newark, N. J.	1051
Malkin Motor Freight Co.	Cambridge, Mass.	499
Manning's Express	East Brookfield, Mass.	504
Martin's Express	Adams, Mass.	1052
Massachusetts Motor Trucking & Garage Co.	Boston, Mass.	507
Melanson's Express	Springfield, Mass.	1053
Mills Transfer Co.	Boston, Mass.	523
William H. Mino	Glastonbury, Conn.	1054
Moan Bros. Express	Hope, R. I.	527
Montuori Bros., Inc.	Fitchburg, Mass.	531
Moshassuck Transportation Co.	Saylesville, R. I.	538
Moskowitz Motor Transportation Co.	Jewett City, Conn.	1055
Motorway Transportation Co.	Boston, Mass.	539
Moulton & Holmes	Boston, Mass.	540
Munroe & Arnold-Merritt Express, Inc.	Salem, Mass.	543
P. B. Mtrie Motor Transportation, Inc.	Boston, Mass.	546
Nasaua Motor Express	Nashua, N. H.	548
National Transportation Co.	Bridgeport, Conn.	1056
Nemasket Transportation Co., Inc.	Middleboro, Mass.	551
New Bedford Dispatch Co.	No. Dartmouth, Mass.	552
Newburgh Transfer, Inc.	Newburgh, N. Y.	553
New England Carrier Corp.	Paterson, N. J.	554
New England Dispatch, Inc.	Boston, Mass.	555
New England Transportation Co.	Boston, Mass.	1081
New Haven Trucking Co., Inc.	New Haven, Conn.	556
New London & Boston Trans. Co.	New London, Conn.	1001
New York Massachusetts Motor Service, Inc.	Springfield, Mass.	558
New York & Worcester Dispatch, Inc.	Worcester, Mass.	560
Northampton & Boston Express Service, Inc.	Hadley, Mass.	564
North, East & West Dispatch	Worcester, Mass.	565
Oates Bros., Inc.	Derby, Conn.	568
G. H. O'Brien, Inc.	Norwood, Mass.	571
O'Brien Transportation Co.	Stoughton, Mass.	572
Old Colony Forwarding Corp.	New York, N. Y.	575
Old Colony Transportation Co.	Fall River, Mass.	577
Onondaga Freight Corp.	Syracuse, N. Y.	1083
Orsine's Trucking Co.	Taunton, Mass.	578
P. & D. Transportation Co.	Newport, R. I.	584
Peerless Motor Express, Inc.	Holbrook, Mass.	594
Perrett & Glenney, Inc.	Manchester, Conn.	1002
Perry's Express	Taunton, Mass.	600
Peterson's Motor Express, Inc.	Manchester, N. H.	602
H. E. Phillips Motor Transportation	Pawtucket, R. I.	606
A. D. Fimenthal Motor Transportation	Newport, R. I.	611
Pioneer Lines	Boston, Mass.	613
1648 Porter Trucking Co., Inc.	Taunton, Mass.	615
Portland-Rumford Express, Inc.	Portland, Maine	616
T. Porto & Sons	Wallingford, Conn.	1003

## ALPHABETIC LIST OF COMPETING CARRIERS—CON.

Carrier name	Address	Code No.
W. H. Potter Co.	Worcester, Mass.	618
Power's Express	Brockton, Mass.	619
Providence Springfield Dispatch	Providence, R. I.	1004
Providence Teaming Co., Inc.	Cranston, R. I.	627
Puritan Freight Lines, Inc.	Bridgeport, Conn.	1005
Hand Picking Express, Inc.	Portsmouth, N. H.	628
Rapid Transportation Co.	Jewett City, Conn.	639
Rapid Motor Lines	New Haven, Conn.	1007
Rapid Transportation Co.	Brighton, Mass.	640
J. H. Redfern Express	Warren, R. I.	641
Rex Motor Transportation	Lawrence, Mass.	647
Reynolds Bros. Transportation Co.	Brockton, Mass.	649
C. Rickard & Sons, Inc.	Bridgeport, Conn.	1008
Riverside Transportation Co.	Medford, Mass.	652
C. A. Roberts Transportation Co.	Winsted, Conn.	654
Robertson's Overland Express	E. Providence, R. I.	656
Rood's Motor Express, Inc.	Waterbury, Conn.	664
Root's Express	Southwick, Mass.	665
H. C. Roulston, Inc.	New York, N. Y.	1009
Royal Transportation	Scitersworth, N. H.	668
Rueppelos Express	New Haven, Conn.	1010
Samuel Rubin	Providence, R. I.	671
St. Germain Motor Transportation	Woonsocket, R. I.	673
St. Johnsbury Trucking Co.	St. Johnsbury, Vt.	674
Sanborn's Motor Express, Inc.	Norway, Maine	676
Savin Express Co.	New London, Conn.	679
Seaboard Freight Lines, Inc.	New York, N. Y.	1058
Seaver's Express	Milford, Mass.	684
Service Transportation Co.	Torrington, Conn.	685
S. T. Shattuck & Sons Express	Andover, Mass.	687
Shaw Motors	Providence, R. I.	689
Shawmut Transportation Co.	Brooklyn, N. Y.	690
Shedd's Express	Putnam, Conn.	1059
Sheridan Bros., Inc.	Central Falls, R. I.	1060
Shipper's Service Express, Inc.	Boston, Mass.	695
Shoe City Express Co.	Brockton, Mass.	696
Shore Line Express	New Haven, Conn.	698
Smith's Express	Meriden, Conn.	1062
Smith & Co. Express	Boston, Mass.	702
H. T. Smith Express Co.	Meriden, Conn.	1061
N. F. Smith & Co.	Lowell, Mass.	705
Sommers' Motor Lines, Inc.	Springfield, Mass.	1063
Southwestern N. H. Transportation Co.	Wilton, N. H.	711
Springfield Martin's Express	Springfield, Mass.	1064
W. A. Stackpole Motor Transportation	Manchester, N. H.	719
Standard Express, Inc.	Terryville, Conn.	1065
Standard Transportation Co.	Pawtucket, R. I.	721
Stankovitch & Roberts	Pawtucket, R. I.	1077
Sterling Express, Inc.	Cambridge, Mass.	724
Stone's Express, Inc.	Lynn, Mass.	727
J. J. Sullivan the Mover, Inc.	Springfield, Mass.	730
Superior Freight Lines Co.	Springfield, Mass.	1066
Superior Motor Transportation Co., Inc.	Cambridge, Mass.	732
1649 Sykes Motor Express	Stratford, Conn.	1067
Taylor Trucking Company	Norwich, Conn.	1068
Theroux Bros.	Woonsocket, R. I.	745
Thibault's Express Inc.	Brunswick, Maine	748
Tomlinson Bros.	New Haven, Conn.	1069
A. Towle Company	Boston, Mass.	753
Trulon's Overland Motor Express Co., Inc.	Bristol, Conn.	1070
Trulon & Platt Motor Lines Inc.	Bristol, Conn.	757
Ralph's Motor Express	Stamford, Conn.	1006
United Transportation Company of R. I.	Providence, R. I.	1078
United Trucking Company	Hartford, Conn.	1071
Vallier's Transportation Service	Norwalk, Conn.	768
Wadland's Boston & Providence Express Co.	Plainville, Mass.	775
P. Wajer & Sons Express Co., Inc.	Webster, Mass.	776
Warren Teaming Co.	Providence, R. I.	781
Watt Bros.	Central Falls, R. I.	785
22 Weldon Motor Express Inc.	Williamantic, Conn.	1079
Westville Trucking Co.	Westville, Conn.	1075
West Side Motor Express Inc.	West Springfield, Mass.	788
D. F. Weymouth Express	Leominster, Mass.	789
E. A. Wildes Co.	Brighton, Mass.	798
Wiley's Express	Laconia, N. H.	799
Henry P. Williamson	Stamford, Conn.	1074

## ALPHABETIC LIST OF COMPETING CARRIERS—Con.

Carrier name	Address	Code No.
Wing's Express, Inc.	Haverhill, Mass.	802
Whited-Hartford Express	Lowell, Mass.	1080
Wolf's Express Co.	Hartford, Conn.	806
Wooster Express, Inc.	Worcester, Mass.	1072
Worcester City Delivery	Westford, Mass.	800
Harold W. Wright Trucking	Boston, Mass.	811
Y. D. & P. Motor Lines	Boston, Mass.	812
Yale Motor Service	New Haven, Conn.	1073
Younken Smith & Hopkins	Boston, Mass.	815

1650

## NUMERICAL LIST OF COMPETING CARRIERS

No.	Carrier	No.	Carrier
1	A B & C Motor Trans. Co., Inc.	205	Curran, M. J. Company.
3	A & N Transportation Co., Inc.	206	Curtis, E. N. Transportation Co.
4	Adams Overland Express.	208	D & N Motor Transportation Co.
7	Affleck's Moving.	209	Daignault's Express Co.
12	Alger Brothers, Inc.	210	Daly's Express.
15	Andrew's & Pierce, Inc.	212	Davis & Davis.
16	Andrew's Transportation Co.	216	Darlington Express.
17	Appleyard's Express Co.	225A	Dechan's Express.
18	Archie's Motor Trans. Co.	231	Direct Transit Lines, Inc.
21	Aspen Trans. Service, Inc.	235	Dockam's Express, Inc.
27	Atkinson Transport, Inc.	243	Driscoll, J. C. Transportation.
28	Atlantic Motor Express.	248	Dufresne Bros. Motor Trans. Co.
29	Atlantic Motor Express.	250	Dunham Trucking Co.
30	Atwood Truck Service, W. E.	252	Dysart's Transportation.
33	Aucilar Motor Trans., W. M.	261	Edward's Express.
41	B & S Transportation Co., Inc.	264	Emmott-Valley Trans. Co., Inc.
44	Bailey's Express.	270	Fall River & New Bedford Ex. Co.
53	Barry, Inc., William C.	274	Federal Motor Trans. Co.
55	Bartlett's Express.	280	Fidan's Express.
58	Baxter's Express Corp.	281	Finnely, A. K.
59	Bay State Motor Express Co.	282	Frank's Express.
60	Beacon Fast Freight Co., Inc.	294	Franklin, Ben Trans. Co.
63	Beaver Transportation Express.	299	Garands Express.
82	Blue Line Motor Transp. Co.	305	Gaspee Transportation Co., Inc.
84	Boack's Express.	306	Gay's Express.
84	Boland, Inc. Richard M.	318	Gold Line Express Inc.
88	Borden Express Co., Inc.	324	Graf Bros.
93	Boston & Buffalo Trans. Co.	331	Green's Storage Whee.
94	Boston & Maine Trans. Company.	338	Haigh, John H.
95	Boston & Rockland Trans. Co.	341	Hallamore's Motor Trans.
96	Boston & Springfield Dispatch.	352	Harrison Dispatch Company.
99	Boston, Bangor Trans. Corp.	362	Hemingway Bros. Interstate Trkg.
102	Boston, Prov. & Fall River Ex.	365	Hercules Trucking Co., Inc.
106	Bourne's Transportation Co.	371	Highway Express Co.
107	Bowen, C. Inc.	382	Holland Trans. Company, Inc.
113	Brocton Auto Express.	383	Holley's Inc.
120	Brown's Express.	384	Holmes Transportation Service.
122	Brown's Motor Express.	390	Huckins & Co., Inc.
125	Burgess Express Co., Inc.	395	Imperial Freight Lines.
130	C & D Service, Inc.	398	Inter City Trans. Company.
131	C & D Transportation Co.	401	Intra State Transfer Corp.
134	Cape Cod Overland Express.	405	Jackson & Sons Motor Express.
135	Capitol Motor Trans. Co., Inc.	409	Jenkins, Henry Trans. Company.
139	Carroll Bros. Express.	411	Jewett City Trucking Co.
140	Carter Russell & Company.	422	Kelly, E. J. Company.
142	Cedergrew, A. L. & Son.	427	Keogh Storage Co., Inc.
155	City Truck Co., Inc.	428	Kirby's Express, Inc.
156	Clark's Express.	433	Kravez, Motor Express.
160	Clinton Auto Express, Inc.	436	L & L Transportation Co.
161	Clinton Transportation Corp.	442	Laramie's Translt. Inc.
162	Clinton Trucking Company.	448	Law & Ingram Transp. Co., Inc.
174	Cole Teaming Company.	450	Lawrence Transportation Co.
183	Connecticut Motor Lines, Inc.	453	LeFrancis Transfer & Teaming.
184	Connecticut Transfer, Inc.	460	Liberty's Eastern Express.
187	Cook's Transportation Co.	472	Lowell Trucking Corp.
188	Cooper's Express.	477	Lyon's Express, Inc.
196	Craft's Motor Trans., Inc.	479	McCarthy's Express.

## NUMERICAL LIST OF COMPETING CARRIERS—Continued

No.	Carrier	No.	Carrier
484	McGarry Transportation Co.	732	Superior Motor Trans. Co., Inc.
489	M C M Transportation Co.	748	Theroux Bros.
491	M & M Transportation Co.	746	Thibault's Express, Inc.
492	M & R Transportation Co.	753	A. Towle Company.
499	Malin Motor Freight Co.	757	Trudon & Platt Motor Lines, Inc.
504	Manning's Express.	768	Vallerie's Transportation Service.
507	Mass. Motor Trkg. & Garage Co.	775	Wadland's Boston & Prov. Express.
523	Mills Transfer Company.	776	P. Wajer & Sons Express, Inc.
527	Moan Bros. Express.	781	Warren Teaming Co.
531	Montuori Bros. Inc.	785	Watt Bros.
538	Moshassuck Transportation Co.	788	West Side Motor Express, Inc.
539	Motorway Transportation Co.	789	Weymouth, D. F. Express.
540	Moulton & Holmes.	798	Wildes, E. A. Company.
543	Munroe & Arnold-Merritt Ex. Inc.	799	Willey's Express.
546	Mutrie, P. B. Motor Trans. Inc.	802	Wings Express, Inc.
548	Nashua Motor Express.	806	Wolff's Express Co.
551	Nemasket Transportation Co.	809	Worcester City Delivery.
552	New Bedford Dispatch Co.	811	Wright, Harold E. Trucking.
553	Newburgh Transfer, Inc.	812	Y. D. F. P. Motor Lines.
554	New England Carrier Corp.	815	Youlden Smith & Hopkins.
555	New England Dispatch Inc.	901	Eastern Motor Freight Lines.
556	New Haven Trucking Co., Inc.	1001	New London & Boston Trans Co.
558	New York Mass. Motor Service.	1002	Perretti & Glenney, Inc.
560	New York & Worcester Dispatch.	1003	T. Porto & Sons.
564	Northampton & Boston Ex. Service.	1004	Prov.-Springfield Dispatch.
565	No. East & West Dispatch.	1005	1005 Puritan Freight Lines, Inc.
568	Oates Bros., Inc.	1006	1006 Ralphs Motor Express.
571	O'Brien, G. H. Inc.	1007	1007 Rapid Motor Lines.
572	O'Brien Transportation Co.	1008	C. Rickard & Sons, Inc.
575	Old Colony Forwarding Corp.	1009	H. C. Rouillon, Inc.
577	Old Colony Transportation Co.	1010	Ruoppolos Express.
578	Orsine's Trucking Co.	1011	Bachman Motor Lines.
584	P & D Transportation Co.	1012	Adley Express Company.
584	Peerless Motor Express, Inc.	1013	Berkshire N. Y. Motor Dispatch.
590	Perry's Express.	1014	Brown's Express.
602	Peterson's Motor Express, Inc.	1015	Garford Trucking, Inc.
606	Phillips, A. E., Motor Trans.	1016	Fairman Motor Lines, Inc.
611	Pimental, A. D. Motor Trans.	1017	Forest City Express.
613	Pioneer Lines.	1018	Frelich Trans. Co., Inc.
615	Porter Trucking Co., Inc.	1019	Gablemanns Express.
616	Portland-Rumford Express, Inc.	1012	Louis J. Gardella, Inc.
618	Potter, W. H. Company.	1021	Goodman's NY & Ct. Express Corp.
619	Power's Express.	1022	Goodman Bros. Trans. Co.
627	Providence Teaming Co., Inc.	1023	Greer Bros.
636	Rand Pickering Express, Inc.	1024	H. S. Express.
639	Rapid Transportation Co.	1025	Hotchkiss Express.
640	Rapid Transportation Co.	1026	Blake Motor Lines, Inc.
641	Redfern, J. H. Express.	1027	Barnard's Express.
647	Rex Motor Transportation.	1028	Berkshire-NY Overnight Express.
649	Reynolds Bros. Trans. Co.	1029	Bills NY-NH Motor Express.
652	Riverside Transportation Co.	1030	Bradley's Express.
654	Roberts, C. A. Trans. Company.	1031	Brown & Pollack Motor Lines.
656	Robertson's Overland Express.	1032	Conn. Eastern Motor Lines.
664	Rood's Motor Express, Inc.	1033	Copways Express.
665	Root's Express.	1034	Cooke's Express Co., Inc.
668	Royal Transportation.	1035	Cooney's Express.
671	Rubin, Samuel.	1036	Crowe & Company.
673	St. Germain Motor Transportation.	1037	Darcey Trans. Co., Inc.
674	St. Johnsbury Trucking Co.	1039	Wm. J. Dobson.
676	Sanborn's Motor Express, Inc.	1040	Edgerton & Sons, Inc.
679	Savin Express Co.	1041	Hurtzeler Bros. Trans.
684	Seaver's Express.	1042	Interstate Auto Express.
685	Service Transportation.	1043	Judd's Express.
687	S. T. Shattuck & Sons Express.	1044	Kennedy's Auto Express.
689	Shaw Motors.	1045	Kling Bros. Trucking Co.
690	Shawmut Transportation Co.	1046	Lakas Motor Lines, Inc.
695	Shipper's Service Express, Inc.	1047	Laube Interstate, Inc.
696	Shoe City Express Co.	1048	Lewis Express.
698	Shore Line Express.	1049	Lombard Bros.
702	Smith & Co.'s Express.	1050	McCarthy's Express.
705	Smith, N. F. & Company.	1051	Madison Transportation Co.
711	Southwestern N. H. Trans. Co.	1052	Martins Express.
719	Stackpole, W. A. Motor Trans.	1053	Melanson's Express.
721	Standard Transportation Co.	1054	William H. Mino.
724	Sterling Express, Inc.	1055	Moskowitz Motor Trans. Co.
727	Stone's Express, Inc.	1056	National Transportation Co.
730	J. J. Sullivan the Mover, Inc.	1057	B & E Transportation Co., Inc.

## NUMERICAL LIST OF COMPETING CARRIERS—Continued

No.	Carrier	No.	Carrier
1058	Seaboard Freight Lines, Inc.	1071	United Trucking Company.
1059	Shedd's Express.	1072	Wooster Express, Inc.
1060	Sheridan Bros., Inc.	1073	Yale Motor Service.
1061	H. T. Smith Express Co.	1074	Henry D. Williamson.
1062	Smith's Express.	1075	Westville Trucking Company.
1063	Sommer's Motor Lines, Inc.	1077	Stankovitch & Roberts.
1064	Springfield Martin's Express.	1078	United Trans. Co. of R. I.
1065	Standard Express, Inc.	1079	H. Weiden Motor Express, Inc.
1066	Superior Freight Lines Co.	1080	Winsted-Hartford Express.
1067	Syke's Motor Express.	1081	New England Transp. Company.
1068	Taylor Trucking Company.	1082	McCullough Transportation Co.
1069	Tomlinson Bros.	1083	Onondaga Freight Corp.
1070	Trudon's Overland Motor Express.	1084	Interstate-Motor Freight System.

1653 TABLE I.—TOTAL NUMBER OF COMPETING CARRIERS BY ROUTES

Between	And	No. carriers	Route shown on map.
Albany, N. Y.	Boston, Mass.	9	E
	Bridgeport, Conn.	4	D
	Fall River, Mass.	3	E
	Fitchburg, Mass.	2	D
	Greenfield, Mass.	2	C
	Hartford, Conn.	6	D
	New Bedford, Mass.	3	E
	New Haven, Conn.	3	D
	New London, Conn.	3	E
	North Adams, Mass.	6	A
	Norwich, Conn.	3	E
	Pittsfield, Mass.	25	A
	Providence, R. I.	4	E
	Springfield, Mass.	9	C
	Taunton, Mass.	2	E
	Waterbury, Conn.	4	D
	Worcester, Mass.	8	D
Amesbury, Mass.	Boston, Mass.	19	A
	Lowell, Mass.	10	A
	Providence, R. I.	7	C
	Springfield, Mass.	5	D
	Taunton, Mass.	6	B
	Worcester, Mass.	7	B
Boston, Mass.	Bridgeport, Conn.	30	E
	Brockton, Mass.	48	A
	Danbury, Conn.	8	E
	Fall River, Mass.	33	A
	Fitchburg, Mass.	22	A
	Greenfield, Mass.	12	C
	Hartford, Conn.	32	D
	Lowell, Mass.	70	A
	Middletown, Conn.	10	D
	New Bedford, Mass.	33	B
	New Haven, Conn.	34	E
	New London, Conn.	20	C
	Newport, R. I.	13	R
	North Adams, Mass.	7	D
	Norwich, Conn.	16	C
	Pittsfield, Mass.	18	E
	Plymouth, Mass.	8	A
	Providence, R. I.	78	A
	Putnam, Conn.	11	B
	Springfield, Mass.	47	C
	Taunton, Mass.	34	A
	Torrington, Conn.	10	E
	Waterbury, Conn.	13	E
	Willimantic, Conn.	14	C
	Winsted, Conn.	7	D
	Worcester, Mass.	64	A

TABLE I.—TOTAL NUMBER OF COMPETING CARRIERS BY ROUTES—Continued

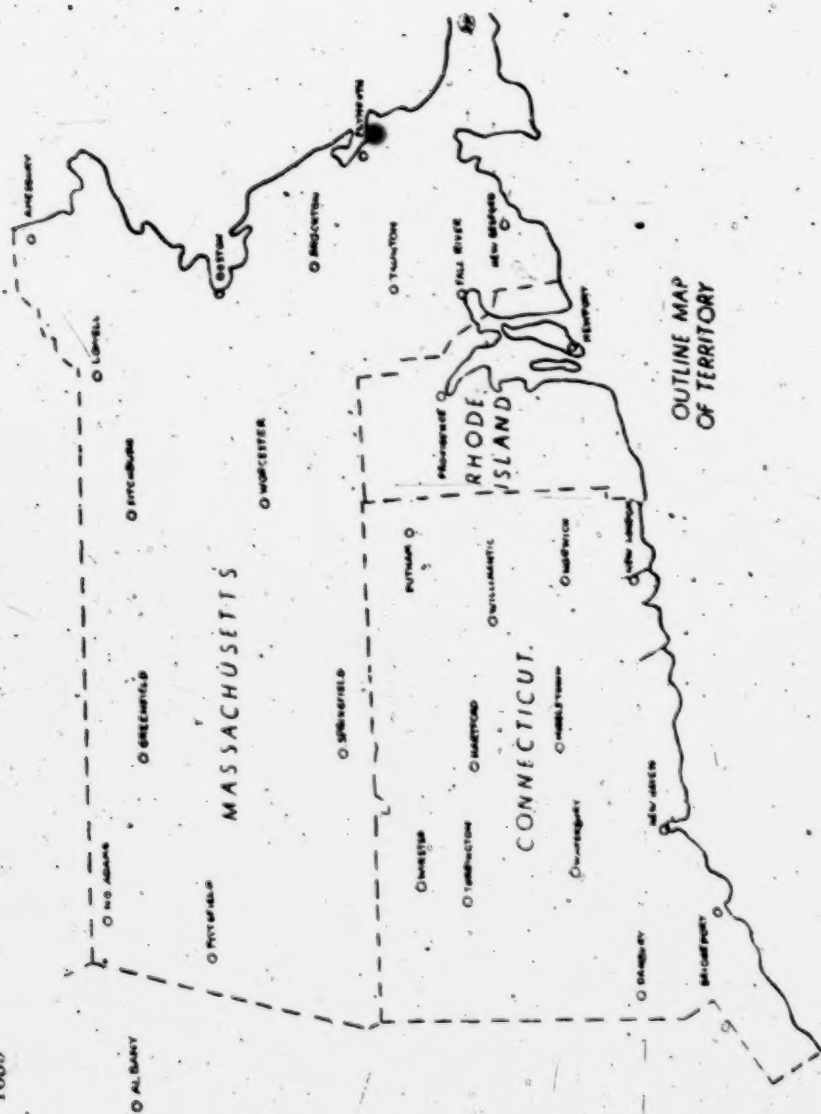
Between	And	No. carriers	Route shown on map
1654 Bridgeport, Conn.	Danbury, Conn.	15	A
	Fall River, Mass.	10	E
	Fitchburg, Mass.	6	E
	Greenfield, Mass.	5	D
	Hartford, Conn.	54	B
	New Bedford, Mass.	9	E
	New Haven, Conn.	71	A
	New London, Conn.	21	B
	Norwich, Conn.	15	C
	Pittsfield, Mass.	4	D
	Providence, R. I.	21	D
	Springfield, Mass.	33	C
	Taunton, Mass.	11	E
	Torrington, Conn.	18	A
	Waterbury, Conn.	29	A
	Winsted, Conn.	14	B
	Worcester, Mass.	21	D
	Fall River, Mass.	16	A
	Hartford, Conn.	9	D
	Lowell, Mass.	21	A
	New Bedford, Mass.	16	A
Brockton, Mass.	New Haven, Conn.	12	E
	New London, Conn.	7	E
	North Adams, Mass.	4	C
	Norwich, Conn.	5	E
	Pittsfield, Mass.	6	E
	Providence, R. I.	19	A
	Springfield, Mass.	10	D
	Taunton, Mass.	19	A
	Waterbury, Conn.	7	D
	Worcester, Mass.	13	B
	Hartford, Conn.	12	B
	Middletown, Conn.	7	B
	New Bedford, Mass.	5	E
	New Haven, Conn.	10	A
	New London, Conn.	7	C
	Norwich, Conn.	7	C
	Pittsfield, Mass.	6	C
	Providence, R. I.	7	D
	Springfield, Mass.	8	C
	Taunton, Mass.	4	E
Danbury, Conn.	Torrington, Conn.	6	A
	Waterbury, Conn.	9	A
	Winsted, Conn.	9	A
	Worcester, Mass.	8	D
	Fitchburg, Mass.	5	C
	Hartford, Conn.	7	C
	Lowell, Mass.	15	R
	New Bedford, Mass.	29	A
	New Haven, Conn.	9	D
	New London, Conn.	8	C
	Newport, R. I.	12	A
	North Adams, Mass.	4	E
	Norwich, Conn.	8	B
	Pittsfield, Mass.	5	E
	Providence, R. I.	30	A
	Springfield, Mass.	7	C
	Taunton, Mass.	20	A
	Waterbury, Conn.	7	D
	Worcester, Mass.	11	B
	Greenfield, Mass.	10	A
	Lowell, Mass.	9	C
1655	New Bedford, Mass.	6	A
	New Haven, Conn.	8	C
	New London, Conn.	3	D
	North Adams, Mass.	3	C
	Providence, R. I.	11	B
	Springfield, Mass.	11	B
	Taunton, Mass.	5	B
	Worcester, Mass.	20	A
Fitchburg, Mass.	Greenfield, Mass.	10	A
	Lowell, Mass.	9	C
	New Bedford, Mass.	6	A
	New Haven, Conn.	8	C
	New London, Conn.	3	D
	North Adams, Mass.	3	C
	Providence, R. I.	11	B
	Springfield, Mass.	11	B
	Taunton, Mass.	5	B
	Worcester, Mass.	20	A

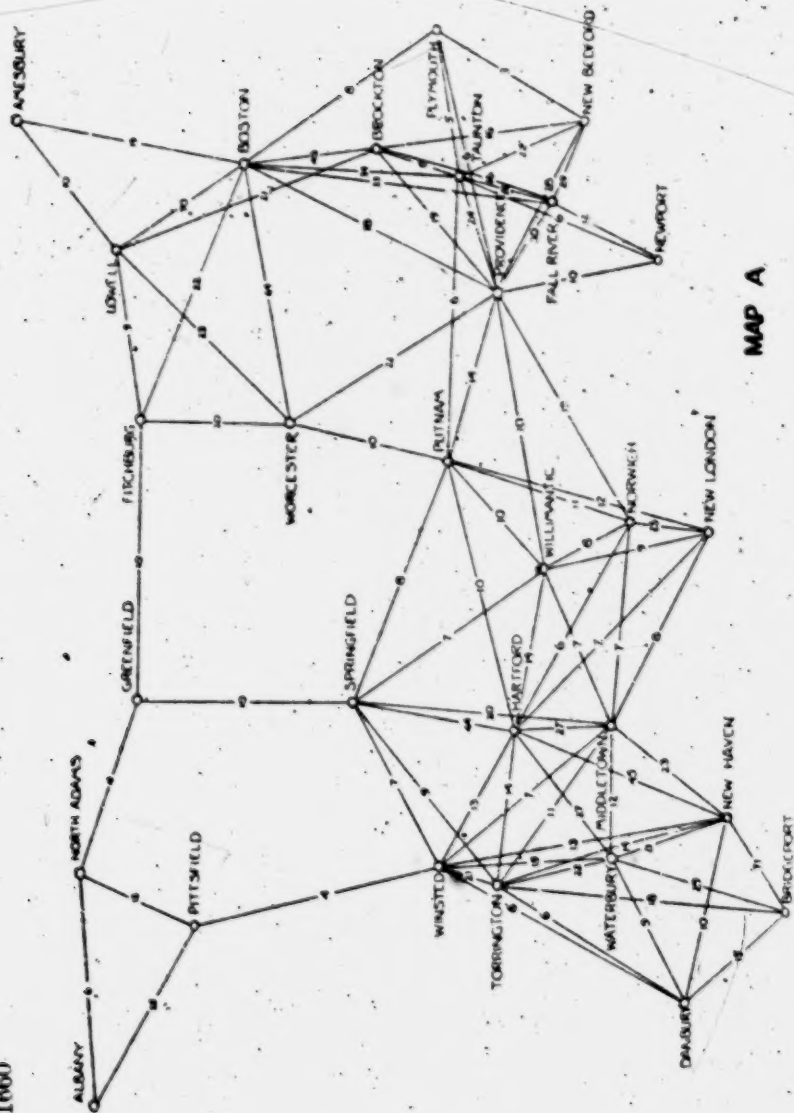
TABLE I.—TOTAL NUMBER OF COMPETING CARRIERS BY ROUTES—Continued

Between	And	No. carriers	Route shown on map
Greenfield, Mass.	Hartford, Conn.	7	B
	Lowell, Mass.	5	C
	New Bedford, Mass.	2	D
	New Haven, Conn.	6	C
	New London, Conn.	3	D
	North Adams, Mass.	4	A
	Norwich, Conn.	2	C
	Pittsfield, Mass.	4	B
	Providence, R. I.	6	D
	Putnam, Conn.	3	B
	Springfield, Mass.	10	A
	Waterbury, Conn.	4	C
	Willimantic, Conn.	3	C
	Worcester, Mass.	8	B
	Lowell, Mass.	12	D
	Middletown, Conn.	27	A
	New Bedford, Mass.	7	D
Hartford, Conn.	New Haven, Conn.	45	A
	New London, Conn.	7	A
	North Adams, Mass.	4	A
	Norwich, Conn.	6	C
	Pittsfield, Mass.	5	B
	Providence, R. I.	16	C
	Putnam, Conn.	10	A
	Springfield, Mass.	44	A
	Taunton, Mass.	5	C
	Torrington, Conn.	14	A
	Waterbury, Conn.	27	A
	Willimantic, Conn.	14	A
	Winsted, Conn.	13	A
	Worcester, Mass.	28	B
	New Bedford, Mass.	14	C
	New Haven, Conn.	13	E
Lowell, Mass.	New London, Conn.	11	D
	North Adams, Mass.	4	D
	Plymouth, Mass.	5	B
	Providence, R. I.	27	B
	Springfield, Mass.	19	C
	Taunton, Mass.	14	B
	Waterbury, Conn.	7	E
	Worcester, Mass.	25	A
Middletown, Conn.	New Haven, Conn.	23	A
	New London, Conn.	8	A
	Norwich, Conn.	7	A
	Providence, R. I.	5	C
	Springfield, Mass.	20	A
	Taunton, Mass.	4	C
	Torrington, Conn.	11	A
	Waterbury, Conn.	12	A
	Willimantic, Conn.	7	A
	Winsted, Conn.	7	A
	Worcester, Mass.	10	C
New Bedford, Mass.	New Haven, Conn.	7	E
	New London, Conn.	7	C
	North Adams, Mass.	4	E
	Norwich, Conn.	7	C
	Pittsfield, Mass.	4	E
	Plymouth, Mass.	3	A
	Providence, R. I.	28	A
	Springfield, Mass.	5	D
	Taunton, Mass.	22	A
	Waterbury, Conn.	5	D
	Worcester, Mass.	10	B
New Haven, Conn.	New London, Conn.	23	B
	North Adams, Mass.	5	B
	Norwich, Conn.	16	D
	Pittsfield, Mass.	4	C
	Providence, R. I.	25	C
	Putnam, Conn.	6	C
	Springfield, Mass.	38	B
	Taunton, Mass.	8	D
	Torrington, Conn.	14	A
	Waterbury, Conn.	21	A
	Willimantic, Conn.	8	B
	Winsted, Conn.	13	A
	Worcester, Mass.	21	D

TABLE I.—TOTAL NUMBER OF COMPETING CARRIERS BY  
ROUTES—Continued.

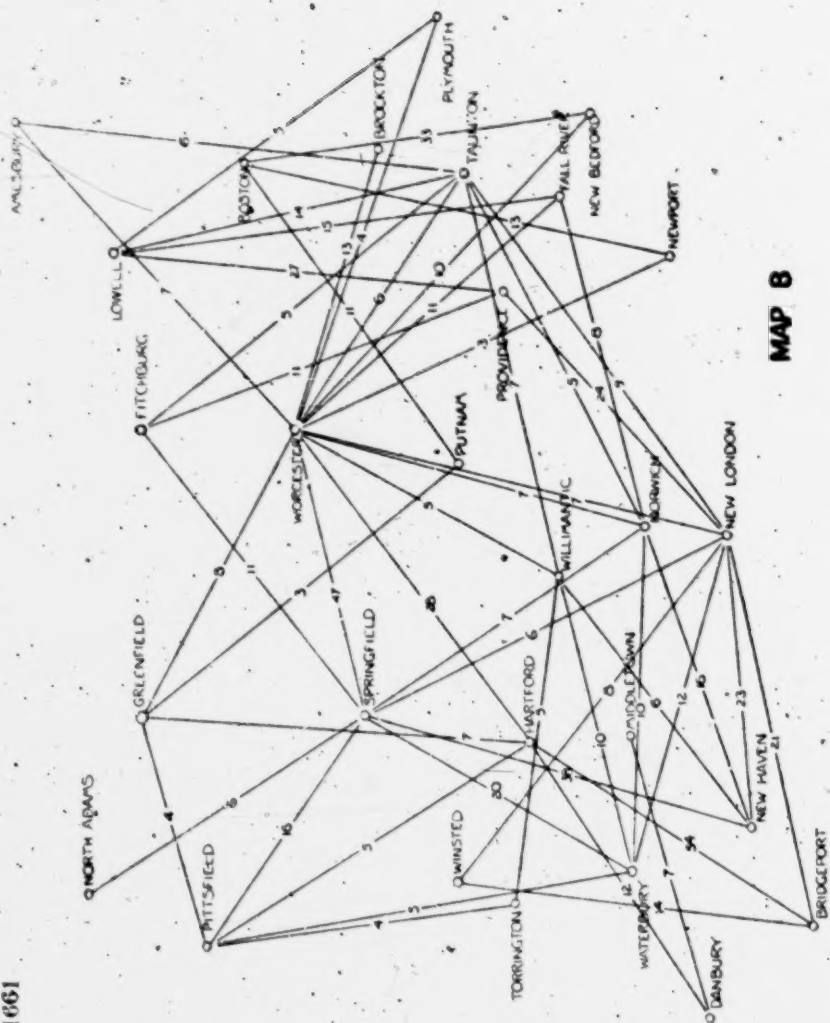
Between	And	No. car- riers	Route shown on map
New London, Conn	Newport, R. I.	4	C
	Norwich, Conn	23	A
	Pittsfield, Mass	5	D
	Providence, R. I.	24	B
	Putnam, Conn	12	A
	Springfield, Mass	6	B
	Taunton, Mass	9	B
	Torrington, Conn	8	C
	Waterbury, Conn	12	B
	Willimantic, Conn	9	B
1657 Newport, R. I	Winsted, Conn	8	A
	Worcester, Mass	7	B
	Providence, R. I.	10	A
	Springfield, Mass	3	D
	Taunton, Mass	6	A
	Worcester, Mass	3	B
North Adams, Mass	Pittsfield, Mass	13	A
	Providence, R. I.	4	E
	Springfield, Mass	6	B
	Waterbury, Conn	3	C
Norwich, Conn	Worcester, Mass	4	C
	Pittsfield, Mass	5	D
	Providence, R. I.	19	A
	Putnam, Conn	11	A
Pittsfield, Mass	Springfield, Mass	7	B
	Taunton, Mass	5	B
	Waterbury, Conn	10	B
	Willimantic, Conn	8	A
	Worcester, Mass	7	B
	Providence, R. I.	6	D
	Springfield, Mass	16	B
	Taunton, Mass	2	E
	Torrington, Conn	4	B
	Waterbury, Conn	5	B
Plymouth, Mass	Winsted, Conn	4	A
	Worcester, Mass	14	C
	Providence, R. I.	6	A
	Springfield, Mass	3	D
	Taunton, Mass	5	A
	Worcester, Mass	4	B
Providence, R. I.	Putnam, Conn	14	A
	Springfield, Mass	13	C
	Taunton, Mass	24	A
	Torrington, Conn	6	D
	Waterbury, Conn	8	D
	Willimantic, Conn	10	A
	Winsted, Conn	5	D
	Worcester, Mass	21	A
	Springfield, Mass	8	A
	Taunton, Mass	6	A
Putnam, Conn	Torrington, Conn	6	C
	Waterbury, Conn	9	C
	Willimantic, Conn	10	C
	Winsted, Conn	5	C
	Worcester, Mass	10	C
	Taunton, Mass	4	C
	Torrington, Conn	9	A
	Waterbury, Conn	20	B
	Willimantic, Conn	7	A
	Winsted, Conn	7	A
Springfield, Mass	Worcester, Mass	47	B
	Taunton, Mass	5	D
	Torrington, Conn	4	D
	Waterbury, Conn	7	B
	Willimantic, Conn	5	D
	Winsted, Conn	6	B
1658 Taunton, Mass	Worcester, Mass	22	B
	Waterbury, Conn	5	A
	Willimantic, Conn	21	A
	Winsted, Conn	8	C
	Worcester, Mass	10	B
	Willimantic, Conn	13	A
Torrington, Conn	Winsted, Conn	11	D
	Worcester, Mass	5	B
	Worcester, Mass	5	B
Waterbury, Conn	Worcester, Mass	10	C
	Willimantic, Conn	10	B
	Winsted, Conn	13	A
Willimantic, Conn	Worcester, Mass	11	D
	Worcester, Mass	5	B





MAP A

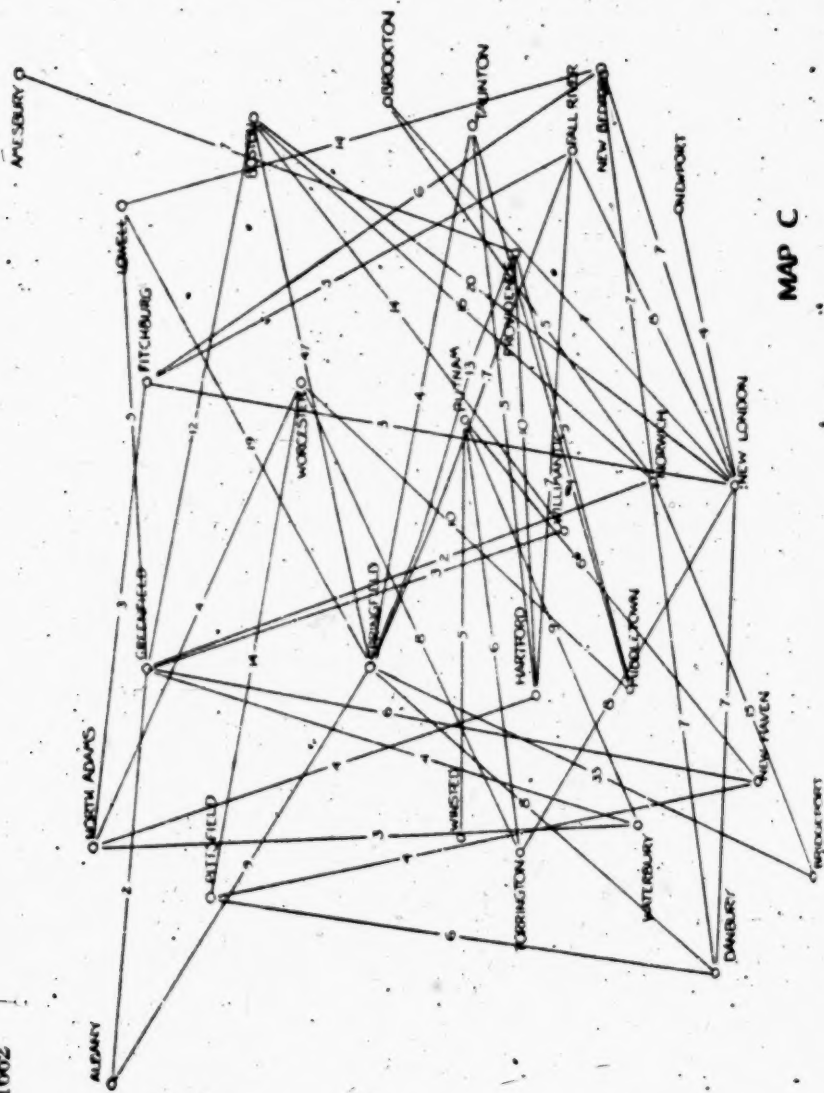
1661



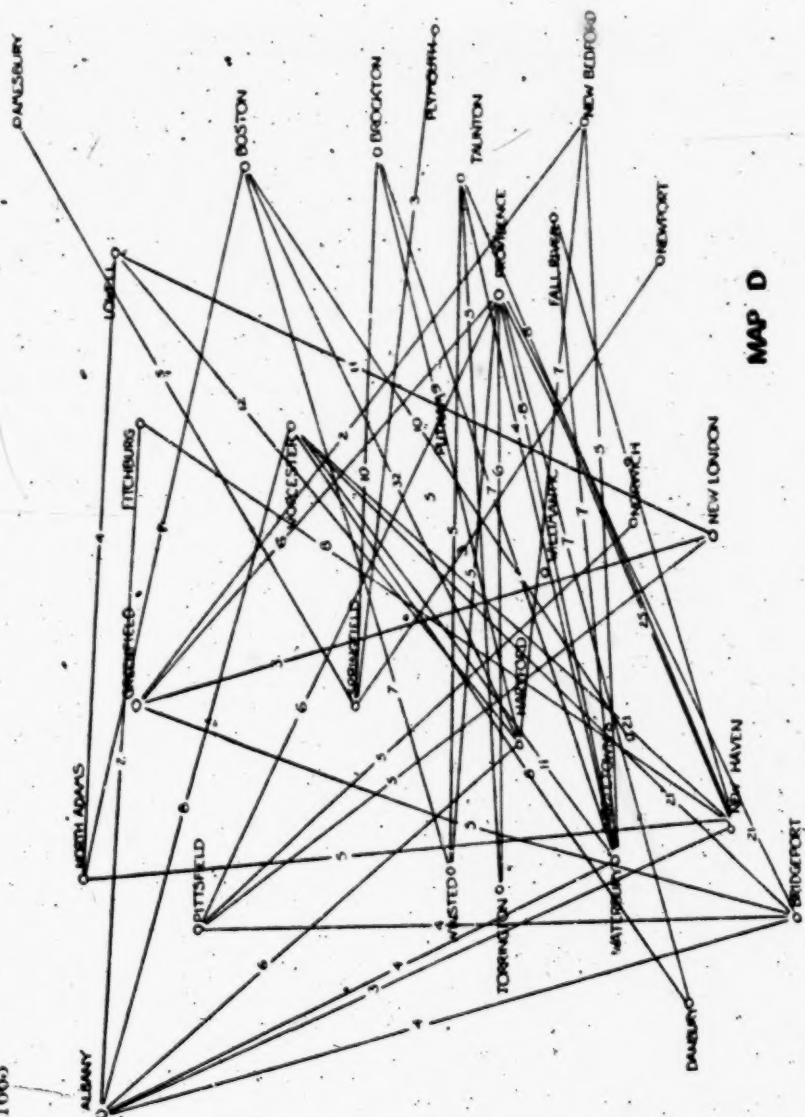
MAP 8

1662

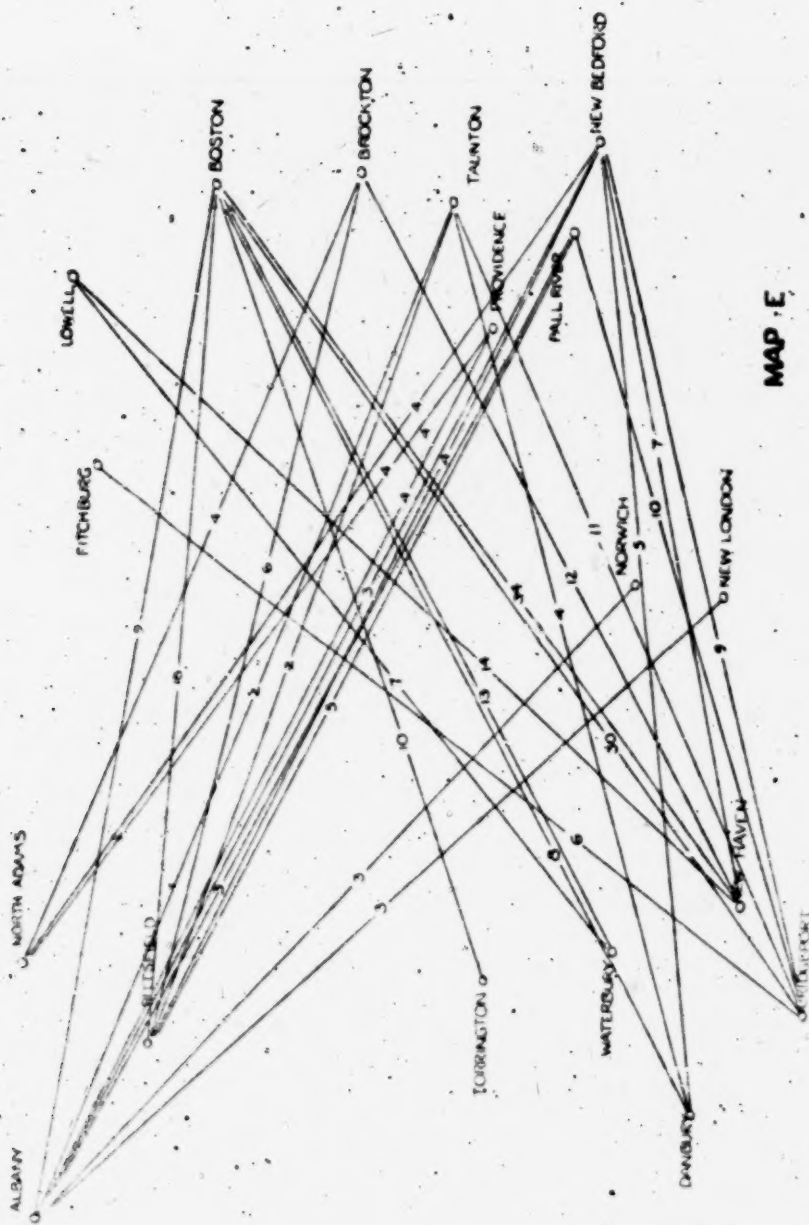
MAP C



1663



1004



MAP E

1665 TABLE II.—ANALYSIS OF COMPETITION BY ROUTES SHOWING INDIVIDUAL CARRIER REFERENCES

Route		Code number of carriers serving route
Between	And	
Albany, N. Y.	Boston, Mass.	41, 93, 250, 395, 1012, 1047, 1058, 1083, 1084.
	Bridgeport, Ct.	1012, 1047, 1058, 1084.
	Fall River, Mass.	1012, 1047, 1084.
	Fitchburg, Mass.	1012, 1047.
	Greenfield, Mass.	1012, 1047.
	Hartford, Ct.	250, 1012, 1047, 1058, 1065, 1084.
	New Bedford, Mass.	1012, 1047, 1084.
	New Haven, Ct.	1012, 1047, 1058.
	New London, Ct.	1012, 1047, 1058.
	No. Adams, Mass.	306, 1012, 1014, 1017, 1047, 1052.
	Norwich, Ct.	1012, 1047, 1058.
	Pittsfield, Mass.	41, 93, 250, 306, 395, 664, 1012, 1014, 1017, 1042, 1047, 1058, 1083, 1084.
	Providence, R. I.	1012, 1047, 1084.
	Springfield, Mass.	41, 93, 250, 395, 1012, 1047, 1058, 1083, 1084.
	Taunton, Mass.	1012, 1047.
	Waterbury, Ct.	254, 1012, 1047, 1065.
	Worcester, Mass.	41, 250, 395, 1012, 1047, 1058, 1083, 1084.
	Boston, Mass.	3, 63, 94, 135, 222, 235, 252, 269, 324, 362, 409, 602, 672, 676, 719, 802, 1012, 1047.
Amesbury, Mass.	Lowell, Mass.	3, 94, 135, 235, 232, 676, 802, 1047, 1081.
	Providence, R. I.	135, 362, 409, 479, 1012, 1047, 1081.
	Springfield, Mass.	135, 409, 1012, 1047, 1081.
	Taunton, Mass.	135, 362, 409, 1012, 1047, 1081.
	Worcester, Mass.	94, 135, 409, 479, 1012, 1047, 1081.
Boston, Mass.	Bridgeport, Ct.	59, 60, 96, 107, 135, 162, 183, 206, 371, 384, 491, 492, 499, 554, 560, 632, 721, 753, 757, 901, 1012, 1015, 1057, 1047, 1051, 1058, 1060, 1063, 1072, 1081.
	Brookton, Mass.	1, 12, 27, 59, 60, 89, 95, 106, 107, 113, 130, 134, 135, 142, 161, 183, 187, 225A, 337, 352, 362, 371, 384, 399, 395, 398, 409, 429, 472, 477, 491, 499, 523, 546, 551, 552, 572, 575, 594, 615, 649, 649, 663, 696, 753, 802, 1012, 1047, 1081.
Danbury, Ct.	Fall River, Mass.	384, 499, 757, 1012, 1047, 1058, 1060, 1081.
		15, 18, 59, 102, 135, 187, 206, 243, 305, 371, 384, 390, 409, 427, 452A, 491, 499, 546, 552, 571, 577, 584, 611, 613, 649, 702, 721, 753, 757, 1012, 1047, 1081.
Fitchburg, Mass.		1, 25, 30, 55, 69, 94, 161, 209, 243, 306, 371, 472, 499, 531, 695, 702, 753, 789, 1012, 1047, 1058, 1081.
		1, 53, 96, 174, 209, 384, 499, 531, 695, 702, 1012, 1047.
Greenfield, Mass.		1, 59, 60, 96, 135, 162, 183, 206, 264, 371, 384, 398, 409, 491, 492, 499, 560, 632, 654, 753, 757, 788, 901, 1012, 1037, 1047, 1058, 1061, 1063, 1071, 1072, 1081.
		1, 3, 17, 28, 33, 59, 60, 63, 84, 88, 99, 94, 95, 96, 107, 125, 135, 161, 174, 196, 208, 235, 243, 252, 306, 362, 384, 390, 395, 409, 414, 436, 438, 450, 460, 472, 479, 484, 491, 499, 523, 540, 543, 546, 548, 555, 575, 636, 640, 641, 649, 668, 672, 676, 687, 696, 702, 705, 711, 724, 746, 753, 799, 802, 806, 815, 901, 1012, 1047, 1081.
Middletown, Ct.	New Bedford, Mass.	52, 183, 371, 384, 499, 757, 1012, 1047, 1071, 1081.
		15, 18, 59, 102, 125, 180, 135, 161, 181, 205, 206, 274, 362, 371, 384, 390, 409, 427, 428, 499, 551, 552, 571, 577, 613, 615, 640, 721, 753, 901, 1012, 1047, 1081.
New Haven, Conn.		1, 59, 60, 96, 135, 162, 183, 264, 371, 382, 384, 433, 492, 499, 554, 560, 632, 753, 757, 785, 901, 1012, 1037, 1047, 1051, 1058, 1060, 1063, 1071, 1072, 1078, 1081.
		50, 135, 183, 206, 371, 384, 390, 411, 499, 546, 554, 652, 757, 1001, 1012, 1051, 1058, 1060, 1072, 1081.
New London, Conn.		15, 102, 187, 305, 371, 427, 546, 577, 584, 611, 798, 1012, 1081.
		96, 174, 409, 499, 603, 1012, 1047, 1058.
Newport, R. I.	No. Adams, Mass.	59, 206, 243, 300, 411, 433, 499, 554, 757, 901, 1001, 1049, 1060, 1072, 1081, 1012.
	Norwich, Conn.	

TABLE II.—ANALYSIS OF COMPETITION—Continued

Route		Code number of carriers serving route
Between	And	
Boston, Mass	Pittsfield, Mass	41, 93, 96, 135, 174, 243, 250, 395, 499, 695, 788, 901, 1012, 1047, 1058, 1081, 1083, 1084.
	Plymouth, Mass	15, 58, 135, 261, 551, 555, 1012, 1081.
	Providence, R. I.	1, 7, 15, 59, 96, 102, 107, 135, 161, 202, 205, 206, 212, 216, 243, 261, 394, 395, 312, 318, 362, 365, 371, 382, 384, 390, 398, 409, 453, 472, 491, 499, 507, 527, 539, 540, 546, 561, 554, 571, 577, 613, 615, 627, 636, 640, 652, 656, 672, 673, 684, 689, 690, 702, 721, 722, 745, 753, 757, 775, 781, 785, 798, 812, 815, 824, 901, 1001, 1012, 1037, 1047, 1051, 1058, 1060, 1071, 1072, 1078.
	Putnam, Conn	93, 384, 390, 411, 499, 652, 654, 776, 1012, 1037, 1047, 1081.
	Springfield, Mass	1, 41, 59, 60, 93, 96, 135, 155, 156, 161, 162, 174, 183, 208, 243, 250, 364, 362, 371, 382, 395, 398, 409, 433, 436, 472, 491, 492, 499, 500, 618, 652, 654, 690, 695, 757, 788, 901, 1012, 1037, 1047, 1058, 1063, 1071, 1081, 1083, 1084.
	Taunton, Mass	59, 69, 102, 130, 134, 135, 187, 206, 210, 243, 352, 362, 371, 384, 390, 409, 427, 428, 472, 491, 540, 546, 551, 552, 571, 577, 613, 615, 640, 721, 757, 815, 1012, 1081.
	Torrington, Conn	59, 206, 654, 757, 1012, 1037, 1047, 1060, 1071, 1081.
	Waterbury, Conn	59, 135, 206, 384, 499, 901, 1012, 1037, 1047, 1058, 1063, 1071, 1081.
	Willimantic, Conn	59, 183, 208, 243, 384, 499, 757, 1012, 1037, 1047, 1058, 1060, 1079, 1081.
	Winsted, Conn	206, 654, 757, 1012, 1047, 1060, 1081.
	Worcester, Mass	1, 12, 41, 59, 60, 94, 135, 155, 156, 190, 161, 174, 183, 208, 231, 243, 248, 250, 364, 290, 352, 362, 371, 382, 384, 390, 398, 436, 472, 491, 492, 499, 504, 519, 540, 555, 560, 564, 600, 618, 640, 654, 684, 690, 695, 702, 721, 732, 753, 757, 776, 788, 809, 901, 1012, 1037, 1047, 1058, 1063, 1071, 1081, 1083, 1084.
Bridgeport, Conn	Danbury, Conn	135, 384, 401, 553, 568, 757, 1005, 1012, 1020, 1021, 1041, 1047, 1056, 1074, 1081.
	Fall River, Mass	135, 206, 371, 499, 555, 757, 1012, 1037, 1047, 1081.
	Fitchburg, Mass	59, 371, 384, 499, 1047, 1081.
	Greenfield, Mass	96, 384, 499, 1012, 1047.
	Hartford, Conn	59, 96, 135, 162, 206, 362, 374, 384, 401, 491, 492, 499, 558, 560, 562, 652, 730, 753, 757, 793, 1002, 1003, 1005, 1007, 1009, 1012, 1016, 1018, 1021, 1022, 1023, 1031, 1034, 1036, 1037, 1040, 1044, 1045, 1046, 1047, 1049, 1051, 1056, 1058, 1062, 1063, 1065, 1066, 1070, 1071, 1072, 1075, 1078, 1081.
	New Bedford, Mass	135, 206, 371, 499, 555, 1012, 1037, 1047, 1081.
	New Haven, Conn	59, 96, 135, 162, 183, 184, 297, 294, 362, 371, 382, 384, 401, 491, 492, 499, 554, 556, 558, 560, 568, 652, 679, 730, 753, 757, 798, 793, 811, 1002, 1003, 1005, 1006, 1007, 1009, 1010, 1011, 1012, 1016, 1020, 1021, 1023, 1029, 1030, 1031, 1034, 1036, 1039, 1040, 1041, 1044, 1045, 1047, 1049, 1051, 1056, 1057, 1058, 1060, 1061, 1062, 1063, 1065, 1067, 1070, 1071, 1072, 1073, 1075, 1081.
	New London, Conn	59, 135, 183, 206, 384, 401, 499, 554, 652, 679, 757, 811, 1012, 1021, 1040, 1049, 1051, 1056, 1058, 1060, 1072, 1081.
	Norwich, Conn	59, 206, 384, 401, 499, 554, 679, 757, 1012, 1021, 1031, 1056, 1060, 1072, 1081.
	Pittsfield, Mass	1012, 1047, 1049, 1081.
1668	Providence, R. I.	135, 183, 206, 371, 382, 384, 499, 554, 652, 679, 753, 757, 811, 1012, 1037, 1047, 1051, 1058, 1060, 1072, 1081.
	Springfield, Mass	59, 96, 135, 162, 183, 362, 382, 491, 492, 499, 558, 560, 652, 730, 753, 757, 793, 811, 1000, 1012, 1016, 1022, 1023, 1034, 1037, 1040, 1049, 1056, 1058, 1066, 1071, 1072, 1081.
	Taunton, Mass	135, 183, 206, 371, 491, 555, 757, 1012, 1037, 1047, 1081.

TABLE II.—ANALYSIS OF COMPETITION—Continued

Route		Code number of carriers serving route
Between	And	
Bridgeport, Conn.	Torrington, Conn.	59, 135, 362, 401, 568, 685, 757, 793, 1005, 1013, 1026, 1037, 1046, 1047, 1056, 1061, 1065, 1081.
	Waterbury, Conn.	59, 96, 362, 384, 401, 568, 685, 730, 793, 1002, 1008, 1006, 1012, 1020, 1023, 1026, 1031, 1036, 1037, 1046, 1047, 1049, 1056, 1058, 1061, 1065, 1072, 1073, 1081.
	Winsted, Conn.	135, 401, 568, 685, 757, 793, 1012, 1026, 1047, 1056, 1058, 1061, 1065, 1081.
	Worcester, Mass.	59, 135, 162, 183, 206, 371, 382, 384, 491, 492, 499, 500, 753, 757, 1012, 1037, 1047, 1058, 1071, 1072, 1081.
		59, 135, 161, 371, 390, 409, 491, 499, 546, 551, 552, 649, 753, 1012, 1037, 1081.
Brookton, Mass.	Fall River, Mass.	1, 60, 491, 499, 753, 1012, 1037, 1047, 1081.
	Hartford, Conn.	1, 59, 60, 89, 95, 107, 135, 161, 371, 384, 390, 395, 472, 491, 499, 546, 575, 753, 802, 1012, 1081.
	Lowell, Mass.	59, 135, 161, 187, 362, 371, 384, 390, 428, 499, 546, 551, 615, 753, 1012, 1081.
	New Bedford, Mass.	1, 60, 183, 371, 491, 499, 649, 753, 1012, 1037, 1047, 1081.
	New Haven, Conn.	183, 371, 499, 546, 1012, 1037, 1081.
	New London, Conn.	409, 499, 1012, 1047.
	No. Adams, Mass.	499, 499, 757, 1012, 1081.
	Norwich, Conn.	135, 395, 499, 1012, 1047, 1081.
	Pittsfield, Mass.	1, 107, 161, 390, 398, 409, 472, 491, 499, 546, 551, 615, 649, 721, 753, 1012, 1037, 1047, 1081.
	Providence, R. I.	1, 60, 135, 183, 371, 395, 499, 753, 1012, 1081.
	Springfield, Mass.	89, 134, 135, 183, 362, 371, 390, 472, 491, 546, 551, 552, 615, 649, 721, 776, 1012, 1037, 1081.
	Taunton, Mass.	135, 409, 499, 1012, 1037, 1047, 1081.
	Waterbury, Conn.	1, 60, 133, 371, 395, 398, 409, 491, 499, 753, 1012, 1081.
	Worcester, Mass.	384, 499, 757, 1005, 1012, 1023, 1047, 1049, 1050, 1058, 1060, 1081.
Danbury, Conn.	Hartford, Conn.	499, 757, 1012, 1023, 1047, 1049, 1081.
	Middletown, Conn.	499, 757, 1012, 1047, 1081.
	New Bedford, Mass.	384, 401, 757, 1005, 1012, 1021, 1041, 1047, 1060, 1081.
	New Haven, Conn.	384, 401, 757, 1012, 1021, 1049, 1081.
	New London, Conn.	384, 499, 757, 1012, 1021, 1049, 1081.
	Norwich, Conn.	664, 1012, 1028, 1047, 1049, 1081.
	Pittsfield, Mass.	384, 499, 757, 1012, 1047, 1090, 1081.
	Providence, R. I.	384, 499, 757, 1012, 1023, 1047, 1081.
	Springfield, Mass.	757, 1012, 1047, 1081.
	Taunton, Mass.	664, 1012, 1026, 1047, 1049, 1081.
	Torrington, Conn.	384, 664, 1012, 1023, 1037, 1047, 1049, 1058, 1081.
	Waterbury, Conn.	664, 1012, 1026, 1047, 1049, 1081.
	Winsted, Conn.	384, 499, 572, 757, 1012, 1047, 1060, 1081.
Fall River, Mass.	Worcester, Mass.	59, 243, 499, 753, 1012, 1081.
	Fitchburg, Mass.	206, 499, 757, 1012, 1037, 1047, 1081.
	Hartford, Conn.	59, 135, 243, 384, 390, 409, 442, 491, 499, 555, 649, 753, 1012, 1047, 1081.
	Lowell, Mass.	15, 18, 59, 102, 122, 131, 135, 205, 206, 331, 338, 362, 390, 409, 427, 442, 499, 546, 555, 577, 721, 753, 1012, 1037, 1047, 1072, 1081.
	New Bedford, Mass.	130, 135, 371, 491, 499, 757, 1012, 1047, 1081.
	New Haven, Conn.	135, 206, 371, 390, 499, 757, 1012, 1081.
	New London, Conn.	15, 102, 125, 131, 305, 371, 546, 577, 584, 611, 1012, 1081.
	Newport, R. I.	409, 499, 1012, 1047.
	No. Adams, Mass.	206, 390, 499, 639, 757, 901, 1012, 1081.
	Norwich, Conn.	135, 499, 1012, 1047, 1081.
	Pittsfield, Mass.	16, 102, 122, 131, 187, 205, 206, 305, 331, 338, 362, 390, 427, 428, 442, 491, 499, 546, 571, 613, 615, 639, 641, 649, 753, 757, 1012, 1037, 1047, 1081.
	Providence, R. I.	135, 206, 499, 757, 1012, 1047, 1081.
	Springfield, Mass.	59, 102, 135, 206, 243, 371, 390, 409, 491, 546, 552, 555, 577, 613, 639, 640, 649, 721, 1012, 1081.
	Taunton, Mass.	206, 499, 901, 1012, 1037, 1047, 1081.
	Waterbury, Conn.	135, 306, 362, 442, 491, 499, 546, 639, 753, 1012, 1081.
	Worcester, Mass.	

TABLE II.—ANALYSIS OF COMPETITION—Continued

Route		Code number of carriers serving route
Between	And	
1671 Fitchburg, Mass.	Greenfield, Mass.	1, 120, 135, 209, 362, 384, 499, 531, 695, 702, 1012
	Lowell, Mass.	1, 59, 94, 362, 499, 702, 753, 1047, 1081.
	New Bedford, Mass.	59, 161, 499, 753, 1012, 1081.
	New Haven, Conn.	1, 59, 254, 384, 499, 1012, 1047, 1081.
	New London, Conn.	135, 362, 1012, 1081.
	No. Adams, Mass.	499, 695, 1012.
	Providence, R. I.	1, 83, 155, 161, 472, 499, 702, 753, 1012, 1047, 1081.
	Springfield, Mass.	1, 59, 83, 155, 161, 371, 384, 695, 1012, 1047, 1081.
	Taunton, Mass.	59, 243, 472, 1012, 1081.
	Worcester, Mass.	1, 4, 59, 83, 120, 135, 155, 161, 306, 371, 384, 531, 695, 702, 753, 789, 1012, 1047, 1058, 1081.
		1, 96, 135, 306, 384, 1012, 1026.
		1, 174, 499, 702, 1012.
		499, 1012.
		1, 96, 135, 384, 499, 1012.
Greenfield, Mass.	Hartford, Conn.	96, 499, 1012.
	Lowell, Mass.	174, 499, 695, 1012.
	New Bedford, Mass.	96, 1012.
	New Haven, Conn.	96, 1012.
	New London, Conn.	96, 499, 1012.
	No. Adams, Mass.	174, 499, 695, 1012.
	Norwich, Conn.	96, 1012.
	Pittsfield, Mass.	499, 695, 1012, 1047.
	Providence, R. I.	96, 155, 384, 499, 702, 1012.
	Putnam, Conn.	96, 384, 1012.
	Springfield, Mass.	1, 96, 135, 139, 174, 306, 362, 384, 1012, 1026.
	Waterbury, Conn.	96, 384, 499, 1012.
	Willimantic, Conn.	96, 499, 1012.
	Worcester, Mass.	1, 120, 155, 174, 380, 384, 1012, 1047.
Hartford, Conn.	Lowell, Mass.	1, 59, 135, 206, 371, 384, 491, 499, 695, 753, 1047, 1081.
		59, 96, 135, 184, 362, 384, 401, 499, 730, 757, 1005, 1007, 1012, 1016, 1018, 1023, 1032, 1034, 1046, 1047, 1056, 1060, 1061, 1062, 1065, 1071, 1081.
1672	Middletown, Conn.	206, 499, 901, 1012, 1037, 1072, 1081.
	New Bedford, Mass.	1, 59, 96, 162, 184, 264, 362, 371, 401, 492, 491, 499, 558, 560, 730, 753, 757, 793, 901, 1002, 1003, 1007, 1009, 1012, 1016, 1021, 1023, 1025, 1031, 1034, 1036, 1040, 1044, 1045, 1056, 1058, 1062, 1063, 1071, 1072, 1075, 1078, 1081.
	New Haven, Conn.	184, 206, 1012, 1032, 1054, 1060, 1081.
	New London, Conn.	499, 1012, 1047, 1049.
	No. Adams, Mass.	184, 206, 1012, 1031, 1032, 1081.
	Norwich, Conn.	499, 788, 1012, 1049, 1081.
	Pittsfield, Mass.	206, 398, 499, 757, 1042, 1037, 1047, 1060, 1078, 1081.
	Providence, R. I.	184, 206, 499, 654, 1012, 1032, 1037, 1047, 1056, 1081.
	Putnam, Conn.	1, 59, 96, 135, 162, 184, 264, 306, 362, 409, 491, 492, 499, 558, 560, 636, 652, 654, 739, 753, 757, 788, 793, 1009, 1012, 1016, 1021, 1023, 1026, 1034, 1036, 1037, 1040, 1047, 1049, 1051, 1056, 1058, 1061, 1063, 1066, 1071, 1072, 1081.
	Springfield, Mass.	757, 1012, 1037, 1047, 1081.
	Taunton, Mass.	59, 206, 654, 757, 793, 1012, 1026, 1035, 1046, 1054, 1060, 1065, 1071, 1081.
	Torrington, Conn.	59, 96, 135, 184, 206, 384, 499, 793, 901, 1002, 1009, 1012, 1017, 1023, 1026, 1032, 1036, 1037, 1046, 1047, 1049, 1050, 1058, 1060, 1071, 1072, 1081.
	Waterbury, Conn.	59, 206, 499, 757, 1012, 1031, 1032, 1037, 1047, 1056, 1058, 1060, 1072, 1081.
	Willimantic, Conn.	206, 654, 757, 793, 1012, 1026, 1035, 1054, 1058, 1060, 1065, 1080, 1081.
	Winsted, Conn.	1, 59, 135, 162, 206, 264, 371, 384, 409, 491, 492, 499, 560, 636, 654, 730, 753, 757, 788, 1012, 1037, 1047, 1058, 1063, 1071, 1072, 1082.
	Worcester, Mass.	59, 125, 135, 161, 371, 384, 390, 409, 442, 490, 555, 640, 753, 1012, 1081.
1673 Lowell, Mass.	New Bedford, Mass.	1, 59, 60, 135, 371, 384, 491, 499, 753, 811, 901, 1012, 1047, 1081.
	New Haven, Conn.	59, 135, 206, 371, 384, 390, 499, 546, 811, 1012, 1081.
	New London, Conn.	174, 499, 499, 1012.
	N. Adams, Mass.	59, 135, 174, 558, 1081.
	Plymouth, Mass.	

TABLE II.—ANALYSIS OF COMPETITION—Continued

Route		Code number of carriers serving route
Between	And	
1673 Lowell, Mass.	Providence, R. I.	1, 59, 107, 125, 135, 161, 243, 371, 384, 390, 409, 442, 472, 491, 499, 540, 546, 636, 640, 811, 815, 901, 1012, 1081.
	Springfield, Mass.	1, 60, 135, 161, 174, 371, 384, 390, 395, 436, 472, 491, 499, 626, 695, 753, 1012, 1047, 1081.
	Taunton, Mass.	59, 89, 135, 243, 371, 384, 409, 472, 491, 540, 555, 640, 1012, 1081.
	Waterbury, Conn.	135, 206, 384, 499, 1012, 1047, 1081.
	Worcester, Mass.	1, 94, 135, 161, 174, 188, 206, 371, 384, 390, 395, 436, 442, 472, 491, 499, 636, 695, 702, 733, 1012, 1047, 1081.
Middletown, Ct.	New Haven, Conn.	44, 59, 96, 135, 184, 362, 371, 401, 499, 730, 757, 1095, 1007, 1012, 1016, 1023, 1024, 1030, 1034, 1048, 1056, 1062, 1081.
	New London, Conn.	184, 499, 757, 1012, 1032, 1036, 1049, 1081.
	Norwich, Conn.	184, 499, 1012, 1032, 1036, 1049, 1081.
	Providence, R. I.	183, 499, 757, 1012, 1081.
	Springfield, Mass.	59, 96, 135, 184, 362, 371, 384, 499, 730, 757, 1012, 1016, 1023, 1034, 1036, 1047, 1056, 1060, 1071, 1081.
	Taunton, Mass.	183, 757, 1012, 1081.
	Torrington, Conn.	59, 757, 1005, 1012, 1046, 1047, 1060, 1065, 1070, 1071, 1081.
	Waterbury, Conn.	59, 184, 499, 730, 1005, 1012, 1032, 1036, 1046, 1049, 1071, 1081.
	Willimantic, Conn.	59, 499, 1012, 1031, 1032, 1056, 1081.
	Winsted, Conn.	757, 1012, 1047, 1060, 1065, 1070, 1081.
	Worcester, Mass.	59, 135, 371, 384, 499, 757, 1012, 1047, 1071, 1081.
	New Haven, Conn.	125, 135, 371, 499, 901, 1032, 1081.
1674 New Bedford, Mass.	New London, Conn.	135, 206, 371, 390, 499, 1012, 1081.
	No. Adams, Mass.	131, 406, 499, 1012.
	Norwich, Conn.	206, 390, 499, 639, 901, 1012, 1081.
	Pittsfield, Mass.	135, 499, 1012, 1081.
	Plymouth, Mass.	281, 551, 1081.
	Providence, R. I.	16, 102, 122, 131, 161, 187, 205, 206, 331, 338, 362, 390, 409, 427, 428, 442, 499, 546, 571, 613, 615, 639, 649, 753, 901, 1012, 1037, 1081.
	Springfield, Mass.	135, 206, 499, 1012, 1081.
	Taunton, Mass.	102, 135, 187, 206, 371, 384, 390, 406, 428, 551, 552, 555, 577, 613, 615, 639, 640, 649, 741, 1012, 1037, 1081.
	Waterbury, Conn.	206, 499, 901, 1012, 1081.
	Worcester, Mass.	135, 206, 362, 442, 499, 546, 639, 753, 1012, 1081.
	New London, Conn.	59, 135, 183, 184, 362, 384, 401, 499, 554, 652, 679, 698, 757, 811, 1012, 1036, 1037, 1049, 1051, 1056, 1058, 1060, 1081.
	No. Adams, Mass.	499, 1012, 1047, 1049, 1058.
	Norwich, Conn.	59, 184, 384, 401, 433, 499, 554, 679, 698, 901, 1012, 1031, 1049, 1056, 1060, 1081.
	Pittsfield, Mass.	499, 1012, 1049, 1081.
New Haven, Conn.	Providence, R. I.	1, 59, 183, 264, 371, 382, 384, 491, 499, 554, 652, 679, 753, 757, 785, 811, 901, 1012, 1037, 1047, 1051, 1058, 1060, 1078, 1081.
	Putnam, Conn.	284, 499, 1012, 1037, 1047, 1081.
	Springfield, Mass.	1, 59, 96, 135, 162, 183, 184, 204, 362, 371, 382, 433, 491, 492, 499, 558, 560, 652, 730, 753, 757, 793, 1000, 1012, 1016, 1021, 1023, 1034, 1036, 1037, 1040, 1047, 1049, 1056, 1058, 1063, 1072, 1081.
	Taunton, Mass.	135, 183, 371, 491, 757, 1012, 1037, 1081.
	Torrington, Conn.	59, 184, 401, 757, 793, 1012, 1021, 1027, 1031, 1037, 1046, 1070, 1071, 1081.
	Waterbury, Conn.	59, 135, 184, 401, 499, 730, 793, 1002, 1009, 1012, 1021, 1023, 1024, 1027, 1037, 1043, 1049, 1060, 1071, 1072, 1081.
	Willimantic, Conn.	59, 184, 679, 757, 1012, 1031, 1056, 1081.
	Winsted, Conn.	184, 206, 401, 757, 793, 1012, 1021, 1027, 1025, 1047, 1065, 1070, 1081.
	Worcester, Mass.	1, 59, 135, 162, 183, 204, 371, 382, 384, 491, 492, 499, 560, 753, 757, 901, 1012, 1058, 1063, 1072, 1081.

TABLE II.—ANALYSIS OF COMPETITION—Continued

Route		Code number of carriers serving route
Between	And	
New London, Ct	Newport, R. I.	371, 546, 1012, 1081.
	Norwich, Conn.	59, 82, 184, 206, 362, 384, 390, 401, 411, 499, 554, 639, 679, 698, 1001, 1012, 1021, 1036, 1049, 1055, 1060, 1067, 1081.
	Pittsfield, Mass.	29, 499, 1012, 1049, 1081.
	Providence, R. I.	29, 59, 82, 183, 206, 362, 371, 383, 384, 390, 499, 546, 554, 652, 679, 757, 811, 1001, 1012, 1051, 1058, 1060, 1067, 1081.
	Putnam, Conn.	96, 184, 206, 384, 390, 411, 499, 639, 1012, 1055, 1056, 1081.
	Springfield, Mass.	96, 135, 184, 1012, 1055, 1081.
	Taunton, Mass.	135, 183, 371, 390, 546, 639, 757, 1012, 1081.
	Torrington, Conn.	184, 206, 401, 757, 1012, 1021, 1054, 1081.
	Waterbury, Conn.	59, 135, 184, 206, 401, 499, 1012, 1021, 1032, 1036, 1049, 1081.
	Willimantic, Conn.	96, 135, 184, 384, 499, 679, 1012, 1056, 1081.
	Winsted, Conn.	184, 206, 401, 757, 1012, 1021, 1054, 1081.
	Worcester, Mass.	135, 206, 384, 390, 639, 1012, 1081.
	Providence, R. I.	102, 131, 305, 371, 546, 577, 798, 1012, 1058, 1081.
Newport, R. I.	Springfield, Mass.	1012, 1058, 1081.
	Taunton, Mass.	102, 371, 546, 577, 1012, 1081.
	Worcester, Mass.	546, 1012, 1081.
No. Adams, Mass.	Pittsfield, Mass.	96, 174, 306, 499, 1012, 1013, 1014, 1028, 1033, 1047, 1049, 1052, 1064.
	Providence, R. I.	96, 479, 499, 1012.
	Waterbury, Conn.	499, 1012, 1049.
1676 Norwich, Conn.	Worcester, Mass.	499, 1012, 1047, 1058.
	Springfield, Mass.	96, 174, 499, 1012, 1047, 1064.
	Pittsfield, Mass.	135, 499, 1012, 1049, 1081.
	Providence, R. I.	29, 59, 82, 206, 243, 362, 384, 390, 499, 554, 639, 679, 901, 1001, 1012, 1060, 1067, 1077, 1081.
	Putnam, Conn.	135, 206, 384, 390, 411, 499, 639, 1012, 1055, 1066, 1081.
	Springfield, Mass.	96, 184, 433, 499, 1012, 1036, 1081.
	Taunton, Mass.	243, 390, 639, 1012, 1081.
	Waterbury, Conn.	59, 135, 206, 401, 499, 1012, 1032, 1036, 1049, 1081.
	Willimantic, Conn.	96, 135, 243, 384, 499, 1012, 1056, 1081.
	Worcester, Mass.	135, 206, 384, 390, 639, 1012, 1081.
Pittsfield, Mass.	Providence, R. I.	96, 135, 499, 1012, 1058, 1081.
	Springfield, Mass.	41, 93, 96, 174, 250, 395, 499, 695, 788, 1012, 1047, 1058, 1064, 1081, 1083, 1084.
	Taunton, Mass.	135, 1012, 1081.
	Torrington, Conn.	664, 1012, 1049, 1081.
	Waterbury, Conn.	499, 664, 1012, 1049, 1081.
	Winsted, Conn.	664, 1012, 1049, 1081.
	Worcester, Mass.	41, 243, 250, 499, 695, 788, 901, 1012, 1047, 1058, 1081, 1083, 1084.
	Providence, R. I.	16, 281, 551, 649, 1012, 1081.
	Springfield, Mass.	135, 1012, 1081.
	Taunton, Mass.	281, 551, 649, 1012, 1081.
Plymouth, Mass.	Worcester, Mass.	135, 558, 1012, 1081.
	Putnam, Conn.	206, 264, 362, 390, 405, 499, 639, 1004, 1012, 1037, 1047, 1059, 1077, 1081.
	Springfield, Mass.	83, 96, 135, 155, 206, 382, 384, 499, 757, 1004, 1012, 1047, 1081.
Providence, R. I.	Taunton, Mass.	135, 183, 206, 243, 281, 362, 390, 472, 491, 540, 546, 551, 571, 578, 600, 613, 615, 639, 649, 721, 815, 1012, 1037, 1081.
	Torrington, Conn.	135, 206, 757, 1012, 1060, 1081.
	Waterbury, Conn.	135, 206, 499, 901, 1012, 1058, 1060, 1081.
	Willimantic, Conn.	206, 243, 499, 679, 757, 1012, 1047, 1058, 1060, 1081.
	Winsted, Conn.	206, 757, 1012, 1060, 1081.
	Worcester, Mass.	1, 83, 135, 155, 206, 264, 362, 382, 384, 427, 442, 499, 627, 639, 684, 702, 745, 753, 1004, 1012, 1081.
	Springfield, Mass.	96, 384, 499, 654, 1004, 1012, 1047, 1081.
	Taunton, Mass.	380, 639, 1012, 1037, 1049, 1081.
	Torrington, Conn.	206, 384, 1004, 1012, 1032, 1037, 1047, 1081.
1677		
Putnam, Conn.	Springfield, Mass.	96, 384, 499, 654, 1004, 1012, 1047, 1081.
	Taunton, Mass.	380, 639, 1012, 1037, 1049, 1081.
	Torrington, Conn.	206, 384, 1004, 1012, 1032, 1037, 1047, 1081.

TABLE II.—ANALYSIS OF COMPETITION—Continued

Route		Code number of carriers serving route
Between	And	
Putnam, Conn.	Waterbury, Conn. Willimantic, Conn.	206, 384, 499, 1009, 1012, 1032, 1037, 1047, 1081, 135, 206, 394, 499, 1012, 1032, 1037, 1047, 1056, 1081.
	Winsted, Conn.	206, 654, 1012, 1047, 1081.
	Worcester, Mass.	206, 264, 384, 499, 639, 654, 778, 1004, 1012, 1081.
Springfield, Mass.	Taunton, Mass.	135, 757, 1012, 1081.
	Torrington, Conn.	59, 135, 654, 757, 793, 1012, 1060, 1071, 1081.
	Waterbury, Conn.	59, 96, 135, 184, 384, 499, 730, 793, 901, 1012, 1023, 1030, 1047, 1049, 1058, 1060, 1071, 1072, 1081.
	Willimantic, Conn.	59, 96, 499, 757, 1012, 1038, 1081.
	Winsted, Conn.	654, 655, 757, 793, 1012, 1060, 1081.
	Worcester, Mass.	1, 41, 59, 60, 83, 125, 155, 156, 161, 162, 174, 183, 206, 243, 250, 362, 371, 382, 384, 395, 396, 436, 472, 491, 492, 499, 560, 618, 636, 654, 690, 695, 753, 757, 788, 1004, 1012, 1037, 1047, 1053, 1038, 1063, 1071, 1072, 1081, 1083, 1084.
Taunton, Mass.	Torrington, Conn.	206, 757, 1012, 1047, 1081.
	Waterbury, Conn.	206, 1012, 1047, 1081.
	Willimantic, Conn.	206, 263, 757, 1012, 1037, 1047, 1081.
	Winsted, Conn.	206, 757, 1012, 1047, 1081.
	Worcester, Mass.	135, 362, 540, 639, 1012, 1081.
Torrington, Conn.	Waterbury, Conn.	59, 206, 362, 401, 664, 685, 1005, 1012, 1021, 1027, 1037, 1049, 1047, 1049, 1056, 1058, 1060, 1061, 1065, 1071, 1080, 1081.
	Willimantic, Conn.	59, 206, 1012, 1037, 1081.
1678	Winsted, Conn.	135, 184, 206, 401, 654, 664, 685, 1012, 1021, 1028, 1027, 1035, 1047, 1049, 1054, 1056, 1058, 1061, 1065, 1080, 1081.
	Worcester, Mass.	59, 136, 206, 654, 757, 1012, 1071, 1081.
Waterbury, Conn.	Willimantic, Conn.	59, 184, 206, 499, 1012, 1031, 1032, 1081.
	Winsted, Conn.	184, 206, 654, 685, 1012, 1021, 1027, 1047, 1049, 1058, 1060, 1061, 1065, 1080, 1081.
	Worcester, Mass.	59, 135, 206, 384, 499, 1212, 1037, 1047, 1071, 1072, 1081.
Willimantic, Conn.	Worcester, Mass.	59, 206, 384, 1012, 1081.

1679

Exhibit 7

PATERSON, NEW JERSEY.

April 7, 1941.

THE TRANSPORT COMPANY,

New York, N. Y.

DEAR SIRS: Referring to the Agreement, dated September 23, 1940 (hereinafter called the Agreement) between The Transport Company (hereinafter called the Company) and John E. Ackerman, James J. Buckley, Jr., George F. Whitehead, John Hamilton, Frank J. Davies, and Teresa G. Ackerman, Trustees, Ruth G. Woodruff, Edward G. Woodruff, and Harold E. Woodruff (hereinafter called the Stockholders) in regard to certain stock of Arrow Carrier Corporation (hereinafter called Arrow), we hereby confirm our understanding as follows:

1. The Company will pay such of the Stockholders as are owners of Preferred Stock of Arrow, as shown on Schedule A hereto, on

April 9, 1941, an aggregate sum of \$107,000, against delivery to the Company of certificates duly endorsed in blank or accompanied by assignments in blank, duly executed, and with transfer stamps attached, for 1,070 shares of the Preferred Stock of Arrow. Such Co., 52 William Street, New York City. The dividend paid on said Preferred Stock on July 10, 1941 (being for the six 1680 months' period ended June 30, 1941), shall be apportioned so that the Stockholders shall receive  $9\frac{1}{180}$  of said dividend, and the Company shall receive  $81\frac{1}{180}$  thereof.

2. The unpaid balance of the purchase price of the stock of Arrow referred to in the Agreement is \$900,000. There shall be no adjustment of said purchase price because of any increase or decrease in the net worth of Arrow between February 28, 1940, and the date of payment of the balance of said purchase price.

3. The date for the payment of the balance of said purchase price shall be December 18, 1941, but the Company may pay said balance at any time.

4. Pending the payment of the balance of said purchase price the undersigned may retain possession of the certificates for Common Stock of Arrow owned by them, respectively, and need not leave said stock deposited in escrow. John E. Ackerman is released from any obligation to hold said stock as trustee or in escrow or otherwise. It is understood and agreed that prior to December 18, 1941, or the earlier payment of the balance of said purchase price, none of the Stockholders will take any action which prevent him or her from delivering such certificates to the Company upon payment of the balance of said purchase 1681 price; provided, however, that any of said stock may be pledged on such terms that it can be released at any time upon payment to the pledge of an amount not exceeding the part of such balance payable to the pledgor.

5. The title of the Company to the Preferred Stock of Arrow delivered pursuant hereto shall not be affected by any failure of the Company to pay the balance of said purchase price. In the event that the balance of such purchase price is not paid on or before December 18, 1941, the transactions existing between the parties (except in respect of said Preferred Stock) shall be considered at an end, and the sum of \$100,000 heretofore paid on account of said purchase price shall be dealt with as provided in the Agreement.

Except as aforesaid the Agreement as modified by letter from the Stockholders to the Company, dated March 7, 1941, remains in full force and effect.

If the foregoing is in accordance with your understanding, please confirm it by signing and returning the enclosed duplicate of this letter.

Yours very truly,

Confirmed:

delivery and payment shall be made at the office of Kuhn, Loeb & THE TRANSPORT COMPANY.

By \_\_\_\_\_, President.

1682

SCHEDULE A

Names of Stockholders:	Amounts to be paid
John E. Ackerman	\$40,000
James J. Buckley, Jr.	40,000
George F. Whitehead	17,000
John Hamilton	10,000

Certified to be a true copy of the original document.

J. S. ARNOLD.

J. S. Arnold.

1683

Exhibit 8

This Agreement by and between The Transport Company, a Delaware Corporation (hereinafter referred to as the Purchaser) and the following persons (hereinafter referred to as the Sellers): John E. Ackerman, James J. Buckley, Jr., George F. Whitehead, John Hamilton, Frank J. Davies, and Teresa G. Ackerman, Trustees, Ruth G. Woodruff, Edward G. Woodruff, and Harold E. Woodruff. Witnesseth:

The Sellers have heretofore, on May 2, 1940, by agreement executed on that date between the parties to this contract, given to the Purchaser an option to purchase certain of the issued and outstanding capital stock of The Arrow Carrier Corporation of Paterson, New Jersey, upon terms and conditions which are specifically set forth in said agreement.

The Purchaser has indicated its intention of exercising its right of purchase of the said stock under said agreement upon the same terms and conditions as are therein set forth, except that upon the transfer of title to the said stock by this contract, there shall be paid to John E. Ackerman as trustee, for the Sellers, the sum of one hundred thousand dollars (\$100,000) on account of the said purchase price, the balance to be paid as provided in the agreement of May 2, 1940, within one hundred sixty-five (165) days of the date of this agreement, or earlier as hereafter provided. The Purchaser shall have the privilege of

paying said balance at any time prior to the expiration of said one hundred sixty-five (165) days.

1684 Now, therefore, in consideration of the premises and for the said consideration, of which one hundred thousand dollars (\$100,000) is being presently paid, and the other terms and conditions of the aforementioned agreement existing between the parties under date of May 2, 1940, the undersigned Sellers do hereby transfer, sell, and assign unto the Purchaser, its successors and assigns, their respective shares of stock of The Arrow Carrier Corporation, as specifically described in the aforementioned agreement. And the Purchaser does herewith pay to the Sellers the said sum of one hundred thousand dollars (\$100,000), and agrees further to pay the balance of the purchase price, as set forth in the aforementioned original agreement between the parties, within one hundred sixty-five (165) days of the date of this agreement, provided, however, that if the purchases provided for in agreements (similar to the agreement between the Sellers herein and the Purchaser dated May 2, 1940) between The Transport Company and stockholders of corporations other than Arrow Carrier Corporation are actually closed prior to one hundred sixty-five (165) days from the date hereof, then the purchase of stock provided for in this agreement shall be closed along with such other purchases.

It is agreed by the parties hereto that the said sum of one hundred thousand dollars (\$100,000), together with the balance of the purchase price when due, shall be paid to John E. Ackerman as trustee (who will act as trustee without compensation) for the purpose of distributing the same in the proportion and among those entitled thereto. John E. Ackerman agrees to deposit said one hundred thousand dollars (\$100,000) in a separate bank account under the name "John E. Ackerman, Special" or "John E. Ackerman as trustee."

1685 It is also understood and agreed that the said John E. Ackerman is likewise designated by the parties hereto to act as trustee for the purpose of holding the said shares of stock here sold until the full purchase price is paid, at which time the said shares shall be turned over to the Purchaser by him properly endorsed and ready for transfer as required by the agreement of May 2, 1940.

The Sellers hereby expressly authorize payment of the said one hundred thousand dollars (\$100,000) and of the balance of said purchase price to John E. Ackerman as trustee, it being understood and agreed that payment by the Purchaser hereunder to John E. Ackerman as trustee shall for all purposes be, and be

deemed, payment to said Sellers of the respective amounts payable to each of them.

It is further understood and agreed that no part of the consideration of one hundred thousand dollars (\$100,000) being presently paid shall be distributed by the said John E. Ackerman among any of those entitled thereto until their said shares of stock have been properly endorsed and delivered by them ready for transfer as required by the agreement of May 2, 1940, to the said John E. Ackerman.

In the event that the balance of the purchase price remaining unpaid is not paid by the Purchaser at the time fixed herein, then and in that event the said shares of stock held by the said John E. Ackerman shall be returned to the owners thereof and the transactions existing between the parties hereto shall be considered at an end, the said sum of one hundred thousand dollars (\$100,000) being retained by the Sellers collectively as liquidated damages for breach of this agreement.

1686 It is further understood and agreed between the parties that all the terms and conditions of the aforementioned contract existing between these parties, under date of May 2, 1940, shall remain in full force and effect, except insofar as modified by this agreement, and the Sellers represent that they have in all respects fulfilled their obligations to date as provided in said agreement of May 2, 1940.

In Witness Whereof, the parties have interchangeably set their hands and seals or caused these presents to be signed by their proper corporate officers and caused their proper corporate seal to be hereto affixed this 23rd day of September, Nineteen Hundred and Forty.

THE TRANSPORT COMPANY

By B. M. SEYMOUR *Pres.* [L. S.]

JOHN E. ACKERMAN [L. S.]

John E. Ackerman,

*Individually and as trustee.*

JAMES J. BUCKLEY, JR. [L. S.]

James J. Buckley, Jr.

GEORGE F. WHITEHEAD [L. S.]

George F. Whitehead

FRANK J. DAVIES [L. S.]

Frank J. Davies,

*Trustee.*

TERESA G. ACKERMAN [L. S.]

Teresa G. Ackerman,

*Trustee.*

RUTH G. WOODRUFF [L. S.]

Ruth G. Woodruff.

EDWARD G. WOODRUFF [L. S.]

Edward G. Woodruff.

HAROLD E. WOODRUFF [L. S.]

Harold E. Woodruff.

JOHN HAMILTON [L. S.]

John Hamilton.

Attest: B. D. RYAN, *Secretary*.

Signed, Sealed, and Delivered in the Presence of: E. N. Pernot,  
as to 9.

1687

*Exhibit 9*

LEASE

This Agreement, made the 24th day of September, Anno Domini one thousand nine hundred and forty, Between Arrow Carrier Corporation, a corporation under the laws of the State of New Jersey, hereinafter called the Lessor, and The Transport Company, a corporation under the laws of the State of Delaware, hereinafter called the Lessee,

Whereas, the Lessee, under date of May 2, 1940, entered into a certain written agreement with all the stockholders of the Lessor to purchase all the stock of the Lessor if and when approved by the Interstate Commerce Commission and under the terms and conditions of the said purchase agreement, and the Lessee wishes to acquire and operate the business and properties of the Lessor prior to the full performance of the said contract of purchase, and

Whereas, the Lessor is willing to enter into a lease of its properties and business to the Lessee, for a consideration hereinafter stated and for the period hereinafter described and under the terms and conditions of this lease agreement, witnesseth:

That the Lessor does hereby lease and hire unto the Lessee the following described property, to wit:

(a) The business of freight haulage by motor vehicle being conducted by the Lessor, including its goodwill;

(b) All its right, title, and interest in and to any and all franchises or operating rights to engage in the  
1688 transportation of property by motor vehicle in inter- or intrastate commerce;

(c) All physical property in which it has either a legal or beneficial title or interest, including real estate, cash, equipment, fuel, parts, tools, furniture, tires, etc.;

(d) All rights, either contractual or otherwise derived by operation of law, including claims by it against any other person or

corporation of the right to make such claim, such as, among other things, on policies of insurance;

(e) Accounts and notes receivable subject to accounts and notes payable.

The term of this lease shall commence at 12:01 a. m. on the day following entry by the Interstate Commerce Commission of an order of approval of the required form BMC42 application, and shall end at 11:59 p. m. on March 15, 1941.

The Lessee covenants and agrees to and with the Lessor as follows, to wit: that it will punctually pay the hire hereinafter described; that it will take good care of the said physical property, normal wear and tear excepted, and will not, without written consent of the Lessor, sell or hire any of it or in anywise part with possession of it; that it will at any time, when so requested, exhibit any and all said property to the Lessor or its agent and, if there be any default by the Lessee in any of the terms and conditions of this lease, it shall be lawful for the Lessor or its authorized agent to enter upon or into any place where the said property

is reasonably believed to be and to take and repossess the same. Upon the expiration of this lease the Lessee will return all of such physical property to the Lessor in as good condition as when received, such normal wear and tear excepted.

The Lessee agrees that it will save the Lessor harmless because of any liability due to or resulting from the operation of such property and conduct of such business by the Lessee during the term of this lease.

The Lessee will separately pay for and procure from the Interstate Commerce Commission the required license plates.

The Lessor will, as of the time when this lease shall commence to operate, either transfer to the Lessee all insurance possessed by it or have the Lessee additionally named in all such insurance policies as a beneficiary, and will likewise procure from the companies which issued such policies of insurance to record with the Interstate Commerce Commission any required insurance certificate or certificates for the benefit of the Lessee as may be required by the rules and regulations of that Commission.

The Lessee agrees to pay to the Lessor as rent and the Lessor agrees to receive a sum equal to whatever shall be the net earnings derived from the operation of the properties and business during the period of the lease, provided that the amount of such rent shall not exceed ten per cent (10%) of the net worth of the Lessor as of February 29, 1940; if the net earnings do so exceed that amount during the period of this lease, the excess over 10% shall be divided equally between the Lessor and the Lessee.

Payment of the base rent as above provided shall be made by the Lessee to the Lessor monthly if desired by the Lessor and any adjustment of additional rent on account of excess earnings shall be made within fifteen (15) days after expiration of this lease.

During the period of this lease all present officials of the Lessor shall be employed by the Lessee at their present compensation and they shall perform duties and have responsibilities corresponding to those now engaged in by them.

During the period of this lease, the business will be conducted under the trade name of "The Arrow Carrier Division of The Transport Company."

In Witness Whereof, the parties hereto have signed this agreement by their respective presidents under the authority of their respective stockholders or directors, or both, as may be required, in the City of New York, State of New York, this 24th day of September 1940.

ARROW CARRIER CORPORATION,  
By JOHN E. ACKERMAN [L.S.],  
President.

THE TRANSPORT COMPANY,  
By B. M. SEYMOUR [L.S.],  
President.

STATE OF NEW YORK.

*County of New York, ss:*

On this 24th day of September 1940, before me personally came John E. Ackerman, to me known, who being by me duly sworn, did depose and say that he resides in Passaic, New Jersey, and is the president of Arrow Carrier Corporation, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation and that he signed his name thereto by like order.

CHARLOTTE A. OSSERMAN.  
Charlotte A. Osserman,  
Notary Public, New York County.

New York Co. Clk's No. 69, Reg. No. 1036; Kings Co. Clk's. No. 7, Reg. No. 1026; Bronx Co. Clk's No. 2, Reg. No. 5-O-41; Commission Expires March 30, 1941.

STATE OF NEW YORK.

*County of New York, ss:*

On this 24th day of September 1940, before me personally came B. M. Seymour, to me known, who being by me duly sworn, did

depose and say that he resides in 42 Bradford Road, Scarsdale, New York, and is the president of The Transport Company, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation and that he signed his name thereto by like order.

CHARLOTTE A. OSSERMAN.

Charlotte A. Osserman,

*Notary Public, New York County.*

New York Co. Clk's No. 69, Reg. No. 1036; Kings Co. Clk's. No. 7, Reg. No. 1026; Bronx Co. Clk's No. 2, Reg. No. 5-O-41; Commission Expires March 31, 1941.

1692 We, the undersigned, stockholders of all of the outstanding common stock of The Arrow Carrier Corporation do hereby approve and consent that the officers of said The Arrow Carrier Corporation enter into the aforesaid agreement of lease with The Transport Company to which this writing is annexed.

Dated: September 21, 1940.

John E. Ackerman; James J. Buckley, Jr.; George F. Whitehead; John Hamilton; Frank J. Davies; Trustee; Teresa G. Ackerman, Trustee; Ruth G. Woodruff; Edward G. Woodruff; Harold E. Woodruff.

1693

*Exhibit 10*

#### AGREEMENT AMENDING LEASES

Whereas the parties hereto, under date of September 21, 1940, entered into a lease agreement by which, subject to approval of the Interstate Commerce Commission, the operations and properties of Arrow Carrier Corporation were leased to The Transport Company until March 15, 1941, subject to the terms and conditions in that written agreement contained, and by agreement dated March 19, 1941, said lease was extended for thirty days; and

Whereas it is mutually desired between the parties thereto that the term of such lease be extended to December 31, 1941.

Now, therefore, in consideration of the payment of Ten Dollars (\$10) by the lessee to the lessor, receipt of which is hereby acknowledged,

It is agreed that the expiration date of the said lease is extended to December 31, 1941.

It is further agreed that the rent for the period from April 15, 1941, to December 31, 1941, shall be a sum equal to whatever

shall be the net earnings derived from the operation of the properties and business during said period, provided that the amount of such rent shall not exceed fifteen percent (15%) of the net worth of the lessor as of March 31, 1941; if the net earnings for said period do exceed said amount the excess over fifteen percent (15%) shall be divided equally between the lessor and the lessee.

It is further agreed that, except as aforesaid, all the terms and conditions in the said written lease of September 24, 1940, are reaffirmed and made applicable to the extended period of termination of the said lease.

This extension agreement is subject to authorization by the Interstate Commerce Commission.

Dated in New York, N. Y., this 9th day of April 1941.

ARROW CARRIER CORPORATION.

By JOHN E. ACKERMAN, *President*.

THE TRANSPORT COMPANY.

By B. M. SEYMOUR, *President*.

Certified to be a true copy of the original document.

J. S. ARNOLD.

J. S. Arnold.

1695

*Exhibit 11*

[Copy]

PATERSON, N. J., March 7, 1941.

THE TRANSPORT COMPANY.

1775 Broadway, New York City, N. Y.

DEAR SIR: Referring to the Agreement dated September 23, 1940, between The Transport Company and John E. Ackerman, James J. Buckley, Jr., George F. Whitehead, John Hamilton, Frank J. Davies, and Teresa G. Ackerman, Trustees, Ruth G. Woodruff, Edward G. Woodruff, and Harold E. Woodruff:

At your request said Agreement is hereby modified and amended as of the date thereof to extend the date of final payment by thirty (30) days by substituting for the words and figures "one hundred sixty-five (165) days" wherever they appear in said Agreement the words and figures "one hundred ninety-five (195) days." Except as so modified and amended, said Agreement remains in full force and effect.

Very truly yours,

John E. Ackerman, Frank J. Davies, Teresa G. Ackerman, *trustees*; Harold E. Woodruff, James

J. Buckley, Jr.; Edward G. Woodruff; John Hamilton; George F. Whitehead; Ruth G. Woodruff.

Accepted:

THE TRANSPORT COMPANY,  
By B. M. SEYMOUR, *President*.

Certified to be a true copy of the original document.

J. S. ARNOLD.

J. S. Arnold.

1695-A

*Exhibit 12*

Before the Interstate Commerce Commission

STATEMENTS AND SCHEDULES

In re Application of Associated Transport, Inc. For the Acquisition, by Exchange of Stock, of Control of Certain Motor Carriers, and for the Consolidation Thereof

Docket Nos. MC-F-1612 & 1613

1695-B

ASSOCIATED TRANSPORT, INC.

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1696

## ASSOCIATED TRANSPORT, INC.

Consolidating balance sheet of the carrier and noncarrier companies included in I. C. C. application as of April 30, 1941—  
as adjusted

## ASSETS

	Consolidated Motor Lines, Inc. 5/17/41	McCarthy Freight System, Inc. 5/17/41	M. Moran Transp. Lines, Inc. 4/29/41	Horton Motor Lines, Inc. 4/30/41	Barnwell Brothers, Inc. 4/30/41	Transportation Inc. 4/30/41	South-eastern Motor Lines, Inc. 4/30/41	Arrow Carrier Corp. 4/30/41	Total carrier companies (per schedule)	Eliminations (per schedule)	Consolidated carrier and noncarrier companies
Current assets:											
1000 Cash	\$215,229.13	59,296.18	83,288.79	43,983.03	26,354.83	5,644.87	4,283.78	62,326.90	501,590.51		510,411.45
1020 Working Funds	11,965.03	765.00	853.20	42,748.88	3,756.80	3,157.27	2,249.41	3,177.32	68,692.91		78,692.91
1040 Special Deposits	960.00	6,151.00	20.00	1,115.04	585.16	1,213.72	745.00	527.50	11,327.26		11,327.26
1060 Temporary Cash Investments—Unpledged	10,034.35			330.00	1,507.33				10,034.35		10,034.35
1080 Notes Receivable	420.00								2,257.33		2,607.33
1100 Accounts Receivable—Associated Companies		7,334.59							7,534.69	192,502.57 (A)	7,534.59
1120 Accounts Receivable—Officers, Stockholders, and Employees	2,098.48	3,125.86	115,249.97	15,426.45	3,576.87	1,852.60	1,052.08	4,574.51	146,926.82		147,709.06
1120 Accounts Receivable—Trade and Others	266,127.74	174,381.65	159,649.97	312,364.69	213,340.00	80,973.35	43,280.75	123,153.27	1,403,271.42		1,406,291.69
2650 Less: Reserve for Uncollectible Accounts	8,268.00	3,558.59	5,031.01	7,861.06	3,593.03	2,229.53	797.29	2,621.43	33,959.94		33,959.94
Accounts Receivable—Trade and Others—Net	257,859.74	170,823.06	154,618.96	304,503.63	209,746.97	78,743.82	42,483.46	120,531.84	1,369,311.48		1,372,331.75
1160 Interest and Dividends Receivable	1,406.70				44.88				1,451.58		1,451.58
1180 Material and Supplies	121,789.94	41,036.17	45,442.36	128,774.40	51,016.21	25,289.88	8,196.08	37,706.16	459,221.20		667,172.36
Total Current Assets	652,753.37	281,140.27	407,017.87	836,881.43	296,818.89	115,902.16	58,979.81	228,854.23	2,578,348.03	192,502.57	2,799,271.04

ASSOCIATED TRANSPORT, INC.—Continued.

Consolidating balance sheet of the carrier and noncarrier companies included in I. C. C. application as of April 30, 1941 —  
as adjusted—Continued

## ASSETS—continued

[illegible]

2571	monetary	27,973.17	4,157.42	6,741.41	7,901.20	3,751.38	533.66	6,206.66	55,354.90	3,255.72	56,610.62
Total Tangible Property											
Investment Securities and Advances:											
1600	Associated Companies	79,240.30			94,329.26				173,569.56	40,300.00	213,869.56
1650	Other Investments and Advances:										
	Pledged				3,038.44				101,869.08		101,869.08
	Unpledged	96,830.64	48,066.40	6,745.87	18,763.00	250.40		510.00	74,335.27		74,335.27
Total Investment Securities and Advances											
		96,830.64	127,306.70	6,745.87	116,180.72	250.00		510.00	349,773.93	40,300.00	390,073.93
Prepayments and Other Deferred Debits:											
1800	Prepaid Taxes	103,429.92	50,582.91	79,801.94	95,686.72	53,563.44	28,160.60	11,761.71	485,646.65	905.92	487,552.57
1810	Prepaid Insurance	33,023.65	18,035.04	82,348.62	30,858.05	21,090.91	17,525.15	3,508.74	223,007.40	3,735.54	226,742.94
1820	Prepaid Licenses	24,052.09	7,943.55	21,982.60	17,306.09	6,973.40	15,475.12	4,060.94	125,869.35	583.02	126,452.37
1830	Other Prepaid Expenses	5,998.20	6,102.20	6,379.81	14,606.78		1,302.47	317.59	39,279.39	5,500.18	44,779.57
1840	Miscellaneous Debits	1,167.48	898.67						2,064.15		2,064.15
Total Prepayments and Other Deferred Debits											
		178,671.34	83,560.37	190,517.97	156,457.64	81,663.75	62,486.34	20,248.98	879,866.14	10,724.66	887,591.60
Total Assets											
		1,696,649.01	915,335.79	1,078,437.68	2,211,054.24	941,301.43	429,829.36	477,260.96	1,184,784.08	8,628,353.15	9,379,466.38

Wherever a date other than April 30, 1941, is indicated, the company closes its books on a period basis. Consequently the assets and liabilities are stated as of the date indicated, but the surplus has been adjusted to April 30, 1941.

## LIABILITIES AND CAPITAL

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Current liabilities:											
2000	Notes Payable	13,500.00			39,728.42	72,467.38	107,023.37	25,000.00	5,000.00	262,719.17	27,500.00
2010	Accounts Payable—Associated Companies				178,201.45				369,804.02	900.00	172,502.57(A)
2020	Accounts Payable—Officers, Stockholders and Employees	188.07	7,113.05	24,000.00	53,864.70		11,967.17		27,300.00	124,472.99	124,472.99
2030	Accounts Payable—Trade and Others	237,563.62	135,878.99	470,325.31	125,804.81	142,303.30	235,150.85	23,328.17	73,846.59	1,148,403.94	1,243,958.89

## ASSOCIATED TRANSPORT, INC.—Continued

Consolidated balance sheet of the carrier and noncarrier companies included in L. C. C. application as of April 30, 1941—  
as adjusted—Continued

## LIABILITIES AND CAPITAL—continued

	Consolidated Motor Lines, Inc.	Motor Freight Systems, Inc.	M. M. Freight Lines, Inc.	M. M. Motor Lines, Inc.	Horton Motor Lines, Inc.	Barnes & Brothers, Inc.	Trabandt Inc.	South-eastern Motor Lines, Inc.	Arrow Carrier Corp.	Total carrier companies (per schedule)	Eliminations (per schedule)	Consolidated carrier and noncarrier companies
2070 Wages Payable	840,915.83	23,000.00	45,347.90	44,269.00	13,867.25	6,771.06	732.54	34,714.66	208,660.00	1,047.21		209,777.81
2080 C. O. Y's Unremitted	163,137.61	11,952.26	2,305.73	2,305.73	210,955.42	37,366.85	6,488.70	782.54	12,808.83	98,846.08		28,504.37
2120 Taxes Accrued	832.37	3,191.79	1,800.38	1,300.00	1,003.39	4,705.76		17,092.08	41,913.49	1,800.34		725,185.66
2150 Interest Accrued	5,085.90	794.07	2,546.34	3,305.92					390.00	66.10		13,504.33
2190 Other Accrued Liabilities									700.25	12,432.48		12,498.58
Total Current Liabilities	457,361.69	272,633.76	487,966.89	659,636.93	276,347.03	372,127.51		96,469.41	392,727.92	2,794,161.14	192,502.57	2,872,373.16
Advances Payable:												
2230 Associated Companies			23,963.68							23,963.68		23,963.68
2250 Other Advances Payable		3,140.42	100,077.50							103,227.01		103,227.01
Total Advances Payable		3,140.42	123,981.27							127,110.69		127,110.69
Equipment and other long-term Obligations:												
2300 Equipment Obligations:												
Due within one year	87,915.13	116,250.34	90,964.04					300.00	24,797.71	453,061.77		453,061.77
Due after one year	243,000.54	43,231.10	35,719.32							414,273.80		414,273.80
2360 Other Long-Term Obligations:												
Due within one year	4,431.57	12,900.00							1,000.00	29,331.57		101,531.57
Due after one year	54,291.08	1,500.00							11,000.00	93,541.08		295,874.36
Total Equipment & Other Long-Term Obligations	390,238.32	171,000.44	426,714.00					300.00	36,797.71	990,208.22	274,833.28	1,264,741.50

[illegible]

NOTE.—Wherever a date other than April 30, 1941 is indicated, the company closes its books on a period basis. Consequently, the assets and liabilities are stated as of the date indicated, but the surplus has been adjusted to April 30, 1941. The Reserve for Contingent Liabilities in the amount of \$1,000.00 for each company is arbitrary, and is to be provided for at the discretion of the board of directors. The Reserve for Contingent Liabilities in the amount of \$1,000.00 for each company is arbitrary, and is to be provided for at the discretion of the board of directors.

## ASSOCIATED TRANSPORT, INC.

## Consolidated Balance Sheet of the Noncarrier Companies Included in I. C. C. Application as of April 30, 1941—As Adjusted

## ASSETS

	Southern New England Termi- nals, Inc.	Brown Equip- ment & Mfg. Co. Inc.	Conger Relaty Co.	Barnwell Ware- house & Broker- age Company	Total non- carrier companies
<b>Current assets</b>					
Cash	\$1,175.56	\$5,353.27	\$1,968.41	\$323.70	\$8,820.94
Notes receivable	350.00				350.00
Accounts receivable—Associated com- panies		182,437.71	900.00	9,164.86	192,502.57
Accounts receivable—Officers, stock- holders and employees	284.00	497.24			781.24
Accounts receivable—Trade and others		2,660.26	220.01	740.00	3,620.27
Material and supplies		207,951.16			207,951.16
Total current assets	1,809.56	308,850.64	3,088.42	9,628.56	413,428.18
<b>Tangible property</b>					
Revenue equipment				10,988.23	10,988.23
Less: Reserve for depreciation				6,424.97	6,424.97
Revenue equipment—Net				4,563.26	4,563.26
Service trucks and autos		636.50			636.50
Less: Reserve for depreciation		291.73			291.73
Service trucks and autos—Net		344.77			344.77
Land	26,318.67		136,858.03	5,476.00	168,652.70
Buildings	202,105.30		283,302.30	10,000.00	495,407.60
Less: Reserve for depreciation	15,984.40		11,570.05	1,187.50	28,741.95
Buildings—Net	186,120.90		271,732.25	8,812.50	466,665.65
Furniture and equipment		50,374.03	12,772.02	605.30	63,751.35
Less: Reserve for depreciation		11,720.21	1,682.71	486.17	13,889.09
Furniture and equipment—Net		38,653.82	11,089.31	109.13	49,852.26
Leasehold improvements—Net		3,255.72			3,255.72
Total tangible property	212,439.57	42,254.31	419,679.58	18,660.98	693,034.54
<b>Investment in associated company</b>				40,300.00	40,300.00
<b>Prepayments and other deferred debits</b>					
Prepaid tires				905.92	905.92
Prepaid insurance	1,089.10	1,039.28	1,511.83	95.33	3,735.54
Prepaid licenses				583.02	583.02
Other prepaid expenses		434.15	5,066.03		5,500.18
Total prepayments and other deferred debits	1,089.10	1,473.43	6,577.86	1,584.27	10,724.66
<b>Total assets</b>	215,338.23	442,627.38	429,345.96	70,713.81	1,157,485.38
<b>1699 Current Liabilities</b>					
Notes Payable		27,500.00			27,500.00
Accounts Payable—Associated Com- panies		900.00			900.00
Accounts Payable—Trade and Other	2,878.00	92,219.92	456.10	0.84	95,554.86
Wages Payable		1,047.21			1,047.21
Taxes Accrued	2,413.18	57,675.83	36,234.75	2,522.33	98,846.09
Interest Accrued	723.67	72.92	825.00	178.75	1,800.34
Other Accrued Liabilities		68.10			68.10
Total Current Liabilities	6,014.85	179,481.98	37,515.85	2,701.91	228,714.59
<b>Advances from Affiliated Companies</b>	79,240.30		94,329.28		173,569.58
<b>Other Long-Term Obligations</b>					
Due within one year	8,300.00		60,000.00	4,000.00	72,300.00
Due after one year	90,833.28		105,000.00	6,500.00	202,333.28
Total Other Long-Term Obligations	99,033.28		165,000.00	10,500.00	274,533.28

## ASSOCIATED TRANSPORT, INC.

## Consolidated Balance Sheet of the Noncarrier Companies Included in I. C. C. Application as of April 30, 1941—As Adjusted—Con.

## ASSETS

	Southern New England Terminals, Inc.	Brown Equip- ment & Mfg. Co. Inc.	Conger Realty Co.	Barnwell Ware- house & Broker- age Company	Total non- carrier companies
<b>Reserves:</b>					
Reserve for State and Federal Income Taxes	5614.82		\$182.52	\$362.52	\$1,459.86
Reserve for Contingent Liabilities	1,000.00	\$1,000.00	1,000.00	1,000.00	4,000.00
Total Reserves	1,614.82	1,000.00	1,182.52	1,362.52	5,159.86
Total Liabilities and Reserves	185,903.25	180,481.98	208,027.65	14,564.43	678,977.31
<b>Capital Stock:</b>					
Preferred Capital Stock				22,800.00	22,800.00
Common Capital Stock	20,000.00	100,000.00	100,000.00	2,000.00	222,000.00
Total Capital Stock	20,000.00	100,000.00	100,000.00	24,800.00	244,800.00
<b>Unappropriated Surplus:</b>					
Earned Surplus	9,434.98	162,145.40	31,318.31	30,809.38	233,708.07
Total Capital Stock and Surplus	29,434.98	262,145.40	131,318.31	55,609.38	478,508.07
Total Liabilities and Capital	215,338.23	442,627.38	429,345.96	70,173.81	1,157,485.38

NOTES.—1. The liability for Federal income and excess profits taxes has been computed to April 30, 1941. 2. The Reserve for Contingent Liabilities in the amount of \$1,000.00 is arbitrary, and is to provide for all contingencies pursuant to contract, including those indicated in the contract and attached schedule.

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## ASSOCIATED TRANSPORT, INC.

## Schedule of Eliminations of Intercompany Advances and Investments as of April 30, 1941—

## (A) Accounts Receivable:

Due to Brown Equipment & Mfg. Co., Inc., from Horton Motor Lines, Inc.	\$182,437.71
Due to Conger Realty Company, from Brown Equipment & Mfg. Co., Inc.	100.00
Due to Barnwell Warehouse & Brokerage Co. from Barnwell Brothers, Inc.	0,164.86
Total	192,502.57

## (B) Advances:

Due to McCarthy Freight System, Inc., from Southern New England Terminals, Inc.	79,240.30
Due to Horton Motor Lines, Inc., from Conger Realty Company	94,329.28
Total	173,569.58

## (C) Investments:

Stock of Barnwell Brothers, Inc., held by Barnwell Warehouse & Brokerage Co.:	
93 shares Preferred Stock @ \$100 per share	9,300.00
310 shares Common stock @ \$100 per share	31,000.00
	40,300.00
Total Eliminations	406,372.15

## ASSOCIATED TRANSPORT, INC.

## Consolidating Statement of Income, Profit, and Loss of the Carrier Companies included in I. C. C. Application for the Fiscal Year Ended April 30, 1941, as Adjusted and per Books

	Consolidated Motor Lines, Inc.		McCarthy Freight System, Inc.		M. Moran Trans. Lines, Inc.		Horton Motor Lines, Inc., 4/30/41		Barnwell Brothers, Inc., 4/30/41		Transportation, Inc.		Southeastern Motor Lines, Inc., 4/30/41		Arrow Carrier Corp.		Total carrier comp.	
	4/30/41, adjusted	5/17/41, per books	4/30/41, adjusted	5/17/41, per books	4/30/41, adjusted	4/26/41 per books	Adjusted	Per books	Adjusted	Per books	4/30/41 adjusted	Per books	Adjusted	Per books	Adjusted	4/30/41, per books	Adjusted	Per books
Carrier Operating Income																		
500 Operating Revenue	\$5,062,725.36	5,062,633.66	2,133,892.58	2,135,154.59	3,018,234.37	3,018,608.42	4,718,697.96	4,716,637.83	2,256,673.50	2,258,052.84	1,331,850.14	1,339,181.94	478,511.39	478,486.08	1,558,917.51	1,558,936.89	20,550,602.51	20,567
Expenses																		
400 Equip. Maint. and Garage Exp.	498,739.69	477,081.34	194,516.00	204,135.67	372,722.11	365,771.61	591,917.11	573,205.00	210,023.71	211,249.05	174,270.82	176,767.54	48,114.21	52,575.15	152,825.20	169,238.01	2,263,128.85	2,230
420 Transportation Expense	857,941.17	858,122.55	594,277.75	596,259.53	1,100,320.38	1,108,628.05	852,952.96	853,059.26	615,894.50	615,354.29	263,945.41	263,854.97	134,570.63	134,587.41	206,573.95	207,523.73	1,665,476.75	1,697
430 Terminal Expense	1,945,022.93	1,944,870.02	489,734.54	489,910.39	628,001.34	623,382.34	999,297.10	1,000,210.38	377,460.71	378,055.95	361,929.73	361,760.29	61,993.51	61,905.06	512,302.49	511,611.89	5,375,652.32	5,371
440 Sales, Tariff and Adver. Exp.	129,250.72	130,823.70	70,461.48	70,125.45	70,565.56	68,895.43	215,906.95	214,428.71	125,042.75	125,628.19	63,976.37	63,882.07	20,551.27	20,617.09	41,818.60	40,850.80	737,622.90	735
450 Insurance and Safety Exp.	252,410.64	254,194.17	79,383.43	75,704.23	192,891.50	189,592.27	212,016.28	217,529.19	123,217.79	111,144.69	93,773.41	89,143.48	20,533.20	20,117.97	71,727.04	69,444.70	1,045,863.29	1,026
460 Admin. and General Exp.	315,582.45	336,084.42	182,371.27	190,422.53	175,777.88	177,721.61	97,611.58	304,573.90	258,910.62	239,251.75	81,953.65	76,447.02	70,132.02	69,039.53	169,564.46	165,670.24	1,781,883.96	1,799
500 Depreciation Expense	178,536.30	175,098.80	110,682.65	98,935.38	116,467.86	113,503.05	249,895.07	249,987.72	94,543.04	120,695.59	58,498.92	61,535.53	14,698.72	16,286.04	105,171.37	98,107.80	928,514.93	932
510 Amortization Chg. to Oper.				2,486.53	1,281.83	1,281.83			1,894.98	3,000.13		620.49		362.27		3,265.01		7
520 Operating Taxes and Licenses	318,590.11	322,508.35	137,585.70	134,486.52	210,678.11	211,217.94	426,292.85	437,464.43	229,379.95	229,341.31	180,702.25	180,674.09	49,495.39	49,201.32	113,469.19	116,401.39	1,669,020.55	1,672
530 Operating Rents—Net	121,734.28	121,734.28	50,059.08	50,129.65	35,109.22	32,808.43	156,945.29	157,218.79	21,840.55	21,840.55	33,877.61	33,765.18	5,905.42	5,922.75	26,700.04	26,700.04	452,201.24	450
Total Expenses	4,637,870.32	4,630,117.63	1,999,071.90	1,912,595.78	2,912,726.76	2,892,802.56	4,235,745.19	4,207,581.36	2,088,015.35	2,090,592.51	1,342,936.37	1,338,401.66	426,082.57	430,614.59	1,400,242.34	1,395,638.60	18,922,699.80	18,893
Net Operating Income	424,855.04	423,516.03	224,920.68	222,558.81	105,508.61	125,805.86	512,952.47	509,056.47	168,628.15	167,460.33	(11,086.23)	780.28	52,428.82	47,871.49	158,675.17	153,298.29	1,636,912.71	1,674
Other Income																		
900 Net Inc. from Noncarrier Oper.	21,879.37	21,373.68									(493.59)	(493.59)					21,385.87	20
920 Interest Income	1,962.93	1,962.93	2,496.51	2,438.07			851.17	866.70	138.81	127.43			8.86	8.86	12.36	12.36	5,470.64	5
930 Other Nonoperating Income	432.28	432.28	316.73	316.73			4.60	662.02							(27.72)	(16.75)	755.95	1
Total Other Income	24,274.58	23,768.89	2,813.24	2,754.80			855.83	1,557.72	138.81	127.43	(493.59)	(493.59)	8.86	8.86	(15.36)	(4.39)	27,612.46	27
Gross Income	449,129.62	447,284.92	227,733.92	225,303.61	105,508.61	125,805.86	513,808.30	510,614.19	168,766.96	167,587.76	(11,519.75)	286.78	52,437.68	47,880.35	158,690.81	153,293.90	1,664,525.17	1,702
Income Deductions																		
700 Interest on Long-Term Oblig.	12,439.60	11,691.92	10,123.93	10,123.93	426.48				7,488.26	5,117.47	4,918.49	3,395.54	317.15	317.15	727.50	727.50	39,441.41	34
710 Other Interest Deductions	745.38	1,036.29	851.24	851.24	180.35	(64.19)	1,872.45	1,965.07	4,376.57	4,382.21	1,488.10	3,797.29	479.02	479.02	2,904.60	2,858.42	15,893.21	15
720 Other Deductions	69.53	1,492.77	802.16	(280.93)	2,281.76	3,631.00	364.44	16,134.32		124.69		5,883.65	213.75			1,800.00	4,612.74	28
Total Income Deductions	13,254.51	11,020.98	11,777.33	10,694.24	2,888.59	3,566.81	2,232.39	18,699.39	11,864.83	12,624.27	501.44	13,078.48	796.17	1,009.92	3,632.10	5,385.92	56,947.36	78
Net Profit Before Federal Income Taxes	435,875.11	433,263.94	215,956.59	214,609.37	102,620.02	122,239.05	511,575.91	492,514.80	156,902.13	154,963.49	(22,051.17)	(12,799.70)	51,641.51	46,870.43	155,057.71	147,907.98	1,607,577.81	1,623
Adjustment of Profit from period to calendar basis as of 4/30/41	(34,038.60)		(16,099.35)		2,919.18												(44,247.77)	
Adjusted Net Profit Before Federal Income Taxes	401,836.51		202,887.24		105,539.20		511,575.91		156,902.13		(22,051.17)		51,641.51		155,057.71		1,563,330.04	
940 Prov. for Fed. Inc. Taxes	97,249.06	599,286.86	49,519.30	32,435.26	25,907.27	30,000.00	122,064.38	157,677.90	37,656.51	13,235.95			12,473.04	8,500.01	37,206.65	21,903.66	382,067.11	364
950 Prov. for Fed. Excess Pfts. Tax	65,757.96	26,941.22	28,204.31	12,101.95									2,480.72				96,448.69	38
Net Profit After Inc. Taxes	298,829.49	306,625.95	125,172.73	170,162.16	79,622.93	92,239.05	390,511.53	334,837.80	119,245.62	165,727.54	(22,051.17)	(12,799.70)	39,168.47	38,361.42	117,851.06	126,004.32	1,081,813.94	1,221
Nonrecurring Exp. Incl. Above	57,347.16		16,832.50				18,235.00		8,420.32				15,475.00		40,703.70		187,103.68	
Less State and Fed. Inc. Taxes Applicable thereto	32,343.80		8,836.33				12,309.57		2,347.24				6,831.98		10,237.87		72,926.79	
Net Nonrecurring Expenses	25,003.36		7,996.17				35,925.43		6,073.08				8,643.02		30,555.83		114,176.89	
Adjusted Net Profit After Taxes Excluding Nonrecurring Exp.	263,812.85		133,148.90		79,622.93		425,436.96		125,318.70		(22,051.17)		45,324.77		148,376.89		1,198,990.83	

NOTE: The figures in this statement indicated "per books" are stated as they appear in the companies' books, without verification by us.

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## ASSOCIATED TRANSPORT, INC.

## Consolidating Statement of Income, Profit, and Loss of the Noncarrier Companies Included in I. C. C. Application for the Fiscal Year Ended April 30, 1941, as Adjusted and Per Books

	Southern New England Terminals, Inc.		Brown Equipment & Mfg. Co., Inc.		Cinger Realty Co.		Bartwell Warehouse & Brokerage Company		Total noncarrier companies	
	Adjusted	Per books	Adjusted	Per books	Adjusted	Per books	Adjusted	Per books	Adjusted	Per books
Income:										
Sales										
Rental income	\$21,399.96	\$22,633.29	\$843,567.24	\$843,342.96	\$125,803.22	\$125,803.22	\$13,536.67	\$13,419.42	\$843,957.24	\$843,342.96
Total income	21,399.96	22,633.29	843,567.24	843,342.96	125,803.22	125,803.22	13,536.67	13,419.42	1,004,297.00	1,003,198.89
Operating costs:										
Cost of goods sold			634,467.33	633,777.15			436.07	2.07	634,467.33	633,777.15
Equipment, maintenance, and garage expense			9,026.33	9,131.84			11.92	11.92	9,464.40	9,131.84
Insurance and safety expense			2,410.31	2,362.96			5,025.00	5,030.56	48,133.78	4,353.70
Administration and general expenses	491.46	248.26	39,472.80	39,118.74	1,179.18	1,983.16	1,283.45	1,325.13	46,493.85	46,493.85
Depreciation expense	3,065.32	3,810.32	1,525.95	680.03	6,512.36	8,314.87	2,031.04	2,260.64	12,647.87	13,663.96
Operating taxes and licenses	3,326.11	3,543.95	15,945.95	16,540.23	15,075.36	16,725.52	716.02	736.02	35,966.01	37,638.91
Interest expense	2,913.22	2,112.32	1,319.28	1,318.28	7,835.81	7,840.81			14,227.43	14,870.53
	4,357.32	4,965.42								
Total operating costs	14,183.43	14,700.27	704,166.95	702,948.63	31,143.81	35,289.57	9,805.50	9,365.66	756,099.69	762,304.03
Net profit before Federal income taxes	7,216.53	7,933.02	139,400.29	140,394.33	94,659.41	90,513.65	-4,021.17	4,053.86	248,207.40	242,894.86
Provision for Federal income taxes:										
Federal income taxes	1,106.23	492.86	33,436.07	33,611.91	22,718.26	20,876.92	867.14	638.27	57,879.70	55,619.96
Federal-excess profits taxes			2,353.11	2,257.01	3,723.40	2,770.84		6,076.51	5,027.84	5,027.84
Total provision for Federal income taxes	1,106.23	492.86	35,806.18	35,868.91	26,441.66	23,647.76	867.14	6,086.77	63,956.21	60,647.80
Net profit after income taxes	6,110.30	7,440.16	103,594.11	104,525.42	68,217.75	66,865.89	3,434.03	3,415.59	184,341.19	182,247.06
Nonrecurring expenses included above			2,000.00						5,000.00	
Less income taxes applicable thereto	3,000.00	495.00	928.40						1,423.40	
Net nonrecurring expenses			1,071.60						3,576.60	
Adjusted net profit after taxes—Excluding non-recurring expenses	2,505.00									
	\$8,613.30		104,662.71		68,217.75		3,434.03		184,917.79	

NOTE.—The figures in this statement indicated "per books" are stated as they appear in the companies' books, without verification by us.

# Summary Statement of Income, Profit, and Loss of the Carrier and Noncarrier Companies Included in I. C. C. Application for the Fiscal Year Ended April 30, 1941, Per Books and as Adjusted

McLEAN TRUCKING CO., INC., ET AL.

	Carrier companies		Noncarrier companies		Total, all companies		Differences representing adjustments	
	Adjusted	Per books	Adjusted	Per books	Adjusted	Per books	Deductions from profit	Additions to profit
Operating Income:								
Carrier operating revenue	\$20,586,602.51	\$20,567,602.25			\$20,559,602.51	\$20,567,602.25	\$4,000.74	\$224.28
Sales of revenue equipment and parts			\$843,567.24	\$843,342.96	843,567.24	843,342.96		
Rental income			190,729.85	161,855.93	190,729.85	161,855.93	1,126.08	
Total operating income	20,586,602.51	20,567,602.25	1,034,297.09	1,005,198.89	21,565,899.60	21,572,801.14		
Cost of Operations:								
Equipment maintenance and garage expense	2,263,128.85	2,230,023.37			2,272,503.25	2,230,157.28	33,436.97	
Transportation expense	4,665,476.75	4,667,369.79	9,464.40	9,133.91	4,665,476.75	4,667,369.79		1,913.04
Terminal expense	5,375,652.32	5,371,736.32			5,375,652.32	5,371,736.32	3,916.00	
Sales tariff and advertising expense	1,737,622.90	1,735,151.44			1,737,622.90	1,735,151.44	2,471.46	
Insurance and safety expense	1,045,893.29	1,026,873.70	4,092.87	4,525.70	1,049,986.16	1,031,398.40	18,587.76	
Administrative and general expense	1,781,883.96	1,799,211.00	48,133.78	48,433.85	1,830,017.74	1,847,704.85		17,687.11
Depreciation expense	928,514.93	932,690.91	12,647.87	13,853.98	941,162.80	946,554.89		5,392.09
Amortization chargeable to operations	3,265.01	7,751.25			3,265.01	7,751.25		4,486.24
Operating taxes and licenses	1,669,020.55	1,672,269.33	35,066.01	37,638.91	1,704,086.56	1,709,908.24	2,070.66	
Operating rents—Net	432,201.24	450,190.58			432,201.24	450,190.58	690.18	
Cost of goods sold			634,467.33	633,777.15	634,467.33	633,777.15		
Total cost of operations	18,922,689.80	18,869,314.69	744,772.26	747,433.50	19,667,462.06	19,640,748.19		
Net operating income	1,636,911.71	1,674,377.56	259,524.83	257,765.39	1,896,437.54	1,932,142.95		
Other Income:								
Net income from noncarrier operations	21,385.87	20,880.18			21,385.87	20,880.18		505.69
Interest income	5,470.64	5,465.35			5,470.64	5,465.35		5.29
Other nonoperating income	755.95	1,424.28			755.95	1,424.28	668.33	
Total other income	27,612.46	27,769.81			27,612.46	27,769.81		
Gross income	1,664,524.17	1,702,147.37	259,524.83	257,765.39	1,924,050.00	1,959,912.76		

<b>Income Deductions:</b>									
Interest on long-term obligations	36,441.41	34,173.51	14,227.43	14,870.53	50,008.34	49,044.04	1,624.80		
Other interest	15,803.21	15,305.26			15,803.21	15,305.26	567.95		
Other deductions	4,612.74	28,999.25			4,612.74	28,999.25			24,386.51
<b>Total income deductions</b>	56,947.36	78,478.02	14,227.43	14,870.53	71,174.79	93,348.55			
<b>Net profit before Federal income taxes</b>	1,907,577.81	1,623,699.35	245,297.40	242,894.86	1,852,875.21	1,866,564.21			
<b>Adjustment of profit from period to calendar month basis as of April 30, 1941</b>	44,247.77				44,247.77		44,247.77		
<b>Adjusted net profit before Federal income taxes</b>	1,563,330.04	1,623,699.35	245,297.40	242,894.86	1,808,627.44	1,866,564.21			
<b>Provision for Federal Income Taxes</b>									
Federal income tax	382,067.11	364,037.74	57,879.70	55,619.96	439,946.81	419,677.70	20,269.11		
Federal excess-profit tax	96,448.99	38,443.17	6,076.51	5,027.84	102,525.50	43,471.01	59,054.49		
<b>Total provision for Federal income taxes</b>	478,516.10	402,500.91	63,956.21	60,647.80	542,472.31	463,148.71			
<b>Net profit after income taxes</b>	1,084,813.94	1,221,198.44	181,341.19	182,247.06	1,266,155.13	1,403,415.50	137,260.87		
<b>Nonrecurring expenses included above</b>	587,103.08		5,000.00		192,103.08				192,103.08
<b>Less State and Federal income taxes applicable thereto</b>	72,926.79		1,423.40		74,350.19				74,350.19
<b>Nonrecurring expenses after deducting taxes</b>	114,176.89		3,576.60		117,753.49				117,753.49
<b>Adjusted net profit after taxes—Excluding nonrecurring expenses</b>	1,198,990.83		184,917.79		1,303,908.62		19,506.88		

NOTE.—The figures in this statement indicated "per books" are stated as they appear in the companies' books, without verification by us.

## ASSOCIATED TRANSPORT, INC.

## Statement Showing the Combined Revenue and Income of the Companies Included in I. C. C. Application for the Years 1939 to 1941, as Indicated

[Carrier Companies]

	Per books		Fiscal year Apr. 30, 1941, as adjusted	Estimated, year 1941	Operations per books for the 4 months Jan. 1 to Apr. 30		Operations for the 8 months May 1 to Dec. 31	
	1939	1940			1940	1941	1940, per books	1941, esti- mated
Operating revenues	\$17,396,548.72	\$18,705,264.41	\$20,559,602.51	\$24,275,035.04	\$5,867,544.14	\$7,656,988.81	\$12,837,730.27	\$16,618,640.23
Expenses								
Equipment maintenance and garage expenses	1,976,999.42	2,108,187.02	2,263,128.85	2,529,918.92	679,931.25	813,556.40	1,428,255.77	3,716,392.52
Transportation expense	4,156,010.40	4,363,204.04	4,655,476.75	5,579,311.78	1,420,877.28	1,719,966.11	2,972,361.36	3,836,345.67
Terminal expense	4,342,675.20	4,915,091.65	5,375,462.32	6,208,649.51	1,607,134.83	1,967,964.72	3,307,956.82	4,210,694.79
Sales tariff and advertising expense	691,383.10	715,130.81	737,622.90	793,028.27	229,891.48	251,417.33	455,229.33	537,690.94
Insurance and safety expense	1,040,943.15	990,544.15	1,045,893.29	1,201,690.62	334,456.96	393,843.08	656,065.19	817,847.54
Administrative and general expense	1,546,550.28	1,749,265.35	1,781,883.96	1,820,269.35	534,533.86	585,725.86	1,214,761.49	1,244,543.49
Depreciation expense	889,808.09	974,751.13	928,514.93	1,017,538.26	327,437.20	396,649.32	647,312.53	710,888.96
Amortization chargeable to operations	5,364.14	3,916.07	3,265.01	3,724.44	1,203.54	1,270.36	2,712.53	2,404.08
Operating taxes and licenses	1,324,200.00	1,521,201.27	1,669,020.55	1,935,942.37	470,675.44	602,889.57	1,050,525.83	1,333,012.80
Operating rents—net	341,044.67	431,097.85	452,261.24	478,860.77	137,667.40	190,530.36	283,420.45	318,030.36
Total expenses	16,227,928.46	17,792,443.94	18,922,699.80	21,574,974.26	5,743,811.24	6,924,133.11	12,048,632.70	14,750,841.15
Net operating revenue	1,168,620.27	912,820.47	1,636,912.71	2,701,660.78	123,732.90	832,855.70	789,087.57	1,867,805.08
Other income	10,345.27	21,993.08	27,612.46	29,350.20	3,521.34	9,253.59	18,381.74	20,096.61
Gross income	1,178,965.54	934,723.55	1,664,525.17	2,730,010.96	127,254.24	842,109.29	807,469.31	1,887,901.69
Income deductions:								
Interest	73,871.80	53,201.55	52,334.62	47,554.24	17,724.90	15,078.56	35,476.62	32,475.68
Other deductions	18,380.17	25,066.72	4,912.74	29,850.62	6,522.85	9,973.02	19,163.87	19,877.60
Total income deductions	92,251.97	78,888.27	56,947.36	77,404.86	24,247.78	25,051.58	54,640.49	52,353.28
Net income before income taxes	1,086,713.57	855,835.28	1,607,577.81	2,652,606.12	103,006.46	817,057.71	752,828.82	1,835,548.41
Less: Adjustments of profit to year ended Apr. 30, 1941:								
Less: Provision for income taxes	230,470.08	285,646.76	1,593,330.04	887,077.36			285,646.76	739,205.38
Net Profit After Income Taxes	\$856,243.49	\$570,188.52	\$1,014,247.77	\$1,765,528.76	\$103,006.46	\$669,185.73	\$467,182.06	\$1,096,343.03

NOTE.—The figures in this statement indicated "per books" are stated as they appear in the companies' books, without verification by us.

## ASSOCIATED TRANSPORT, INC.

Proforma balance sheet as of June 30, 1941, giving effect to the adjusted assets and liabilities at April 30, 1941, of the companies included in I. C. C. application

## ASSETS

	Merging Companies								Per Books						Total merging companies before adjustments	(Decrease) adjustment, including eliminations	Total merging companies, as adjusted	Associated Transport, Inc., 6/30/41	Giving effect to transaction addition
	Consolidated Motor Lines, Inc.	McCarthy Freight System, Inc.	M. Moran Transportation Lines, Inc.	Horton Motor Lines, Inc.	Barnwell Brothers, Inc.	Transportation, Inc.	Southeastern Motor Lines, Inc.	Arrow Carrier Corporation	Total carrier companies	Southern New England Term. Inc.	Brown Equip. & Mfg. Co., Inc.	Conger Realty Company	Barnwell Wks. & Bkg. Company	Total non-carrier companies					
Current Assets:																			
Cash	\$216,229.13	\$55,164.81	\$79,092.60	\$43,614.33	\$26,554.90	\$5,644.87	\$4,283.78	\$62,432.69	\$493,547.11	\$1,175.56	\$5,014.14	\$168.41	\$323.70	\$6,681.81	\$500,228.92	\$10,182.53	\$510,411.45	\$36,446.39	\$1,410,000.00
Working Funds	11,985.03	765.00	2,540.00	47,425.00	7,570.00	3,913.23	2,335.00	3,295.00	79,828.26		375.00			375.00	80,203.26	(14,510.35)	65,692.91		
Special Deposits	965.00	7,357.00	98.00	14,449.56	590.00	11,113.22	745.00		35,865.28		15.70			15.70	35,880.98	(24,553.72)	11,327.26		
Temporary Cash Investments	70,034.35								40,034.35						10,034.35		10,034.35		
Notes Receivable	30,421.05			338.00	507.33				37,258.38		350.00			350.00	37,608.38	(35,001.05)	2,607.33	15,620.00	
Receivables from Associated Companies		64,740.30							64,740.30		183,916.30	6,077.90	9,164.36	109,158.76	263,893.06	(256,364.47)	7,528.59		
Receivables from Officers and Employees	1,445.07	7,105.21	153,499.68	15,461.45	8,949.85	2,024.59	1,562.08	4,716.51	194,754.44		497.24			497.24	195,251.68	(47,543.62)	147,708.06		
Accounts Receivable less Reserve for Uncollectible Accounts	257,139.68	167,661.31	173,757.79	289,732.08	203,528.61	84,487.34	42,031.89	129,709.02	1,341,047.72	284.00	3,219.24		140.00	3,643.24	1,344,690.96	27,640.79	1,372,331.75		
Subscribers to Capital Stock				4,955.30					4,955.30						4,955.30	(4,955.30)			2,278.00
Interest and Dividends Received	1,405.65								1,405.65						1,405.65		1,431.58		
Material and Supplies	125,614.57	31,849.95	32,749.90	113,667.18	62,427.81	30,732.41	8,166.08	14,872.63	419,080.53		156,722.11			156,739.11	575,819.64	91,352.72	667,172.36		
Other Current Assets				50.39			510.00		500.39						500.39	(4,500.39)			
Total Current Assets	660,269.53	334,643.58	444,247.97	529,634.90	310,158.80	137,915.66	50,633.83	206,573.35	2,683,077.71	1,809.56	349,775.73	6,246.01	9,628.56	367,460.86	3,050,538.57	(251,266.93)	2,799,271.64	52,066.89	1,412,278.00
Tangible Property																			
Revenue Equipment (Net)	645,321.32	309,777.80	449,573.66	1,275,589.46	294,578.50	212,946.39	69,333.00	355,793.90	3,612,924.03				4,324.14	4,374.14	3,617,298.17	133,776.35	3,751,074.52		
Motor Trucks and Autos (Net)	5,806.19	9,289.44	3,913.47	15,063.92	2,150.00	1,616.49	3,139.98	4,948.78	44,537.27		348.09			348.09	44,885.36	3,419.54	48,304.90		
Buildings (Net)		7,500.00		39,028.57	39,028.57			109,609.85	156,138.42	26,318.67		136,858.03	5,476.09	168,652.79	324,791.21	941.40	325,732.61		
Furniture and Equipment (Net)	78,540.11	26,166.88	14,777.13	105,681.74	35,103.64	22,034.49	8,507.63	37,476.78	254,824.53	174,974.93		282,198.02	8,795.46	465,968.41	929,732.46	1,922.37	922,654.83		
Household Improvements (Net)	23,851.90	3,781.61	7,236.03	4,883.50	5,568.32	533.66	5,373.84	1,069.05	52,297.91		38,193.33		17.82	38,211.15	366,439.05	43,582.26	410,021.31		
Total Tangible Property	751,519.52	397,999.75	475,440.29	1,401,828.62	334,932.03	237,131.03	86,354.45	763,722.89	4,648,889.58	201,293.60	38,541.42	419,056.05	18,663.51	677,554.58	5,326,444.16	189,954.63	5,516,398.79		
Intangible Property																			
Organization Expense (Net)	306.62			2,342.86		1,169.56			3,820.04	310.82	103.50			414.32	4,234.36	(4,234.36)		8,135.61	90,000.00
Franchises (Net)	2,305.00		1,000.00	2,665.25	387.99	31,057.78	10,528.17	30,747.35	78,691.54		674.16			78,691.54	(78,691.54)				
Patents (Net)					11,521.88	32,478.32			44,000.20					44,000.20	(44,000.20)				
Other Intangible Property (Net)																			
Total Intangible Property	2,611.62		1,000.00	5,009.11	11,909.87	64,705.66	10,528.17	30,747.35	126,511.78	310.82	777.66			1,088.48	127,600.26	(127,600.26)		8,135.61	90,000.00
Investment Securities and Advances:																			
Investments and Advances—Associated Companies		18,000.00		97,706.88					115,706.88					40,300.00	40,300.00	156,006.88	(156,006.88)		
Other Investments and Advances	98,830.64	47,553.11	6,711.26	17,688.44	8,593.29		510.00		179,886.74						179,886.74	(3,682.39)	176,204.35		
Total Investment Securities and Advances	98,830.64	65,553.11	6,711.26	115,395.32	8,593.29		510.00		295,593.62					40,300.00	335,893.62	(159,689.27)	176,204.35		
Prepayments and Other Deferred Debits:																			
Prepaid Taxes	103,965.21		78,593.75	9,072.13	47,760.76	2,128.00		37,868.14	278,897.99					278,897.99	208,654.58	487,552.57			
Prepaid Insurance	33,740.09	16,941.09	5,290.05	16,283.40	21,078.16	14,782.70	3,508.74	17,664.10	129,288.33	1,052.62	1,015.83	1,614.72	95.39	3,778.50	133,066.83	93,676.11	226,742.94		
Prepaid Licenses and Taxes	26,052.09	7,943.55	19,848.44	28,999.56	4,209.58	15,442.87	4,690.94	20,363.23	130,490.26		962.04	4,746.41	583.02	6,291.47	136,781.73	(10,329.36)	126,452.37		
Other Prepaid Expenses	9,261.80	4,112.52	15,278.34	19,509.04	3,559.93	2,695.78	274.33	5,343.22	59,975.08		149.86			60,124.94	(15,345.37)	44,779.57			
Miscellaneous Deferred Debits	2,052.86				308.31	3,625.04		4,526.77	10,562.98		484.91			484.91	14,047.89	(8,983.74)	2,064.15		
Total Prepayments and Other Deferred Debits	177,672.14	28,997.19	118,830.58	73,834.13	76,966.74	38,674.39	8,444.01	85,795.46	609,214.64	1,052.62	2,612.64	6,361.13	678.35	10,794.74	619,919.38	297,672.22	917,591.60		
Total Assets	1,680,903.45	827,154.63	1,046,230.10	2,125,702.08	942,660.82	478,426.74	165,470.46	1,086,839.05	8,363,287.33	204,466.60	391,708.45	431,663.19	69,270.42	1,097,108.66	9,408,395.99	(80,929.61)	9,327,466.38	60,202.00	1,511,278.00

Notes: 1. The figures in this statement indicated "per books" are stated as they appear in the companies' books, without verification by us. 2. The assets and liabilities of Consolidated Motor Lines, Inc., and McCarthy Freight System, Inc., are as of May 17, 1941. The assets and liabilities of M. Moran Transportation Lines, Inc., are as of April 26, 1941. However, the surplus of these companies has been adjusted to April 30, 1941.

# ASSOCIATED TRANSPORT INC.

Pro-Forma Balance Sheet as of June 30, 1941, Giving Effect to the Adjusted Assets and Liabilities at April 30, 1941, of the Companies Included

## LIABILITIES AND CAPITAL

	Merging companies per books													Total merging companies before adjustments	Adjustments (including eliminations) (decreases)
	Consolidated Motor Lines, Inc.	McCarthy Freight System, Inc.	M. Moran Transportation, Inc.	Horton Motor Lines, Inc.	Barnwell Brothers, Inc.	Transportation, Inc.	Southeastern Motor Lines, Inc.	Arrow Carrier Corporation	Total carrier companies	Southern New England Term., Inc.	Brown Equip. & Mfg. Co., Inc.	Conger Realty Company	Barnwell Wholesale & Bro. Company	Total non-carrier companies	
Current liabilities:															
Notes payable		\$13,500.00		\$39,728.42	\$85,127.56	\$91,804.46	\$24,000.00	\$5,000.00	\$250,160.44		\$27,300.00			\$27,300.00	\$26,690.44
Payables to associated companies				187,307.77	8,164.86				196,472.63		900.00			900.00	197,372.63
Payables to officers and employees	\$198.07	9,062.40	\$17,581.90		5,364.96	12,987.17			45,184.52						45,184.52
Accounts payable - trade and others	279,559.00	124,731.29	442,359.59	125,726.92	138,629.59	213,602.90	23,304.83	64,373.28	1,412,287.91		53,927.97	\$456.10	\$0.84	54,384.91	1,460,672.82
Wages payable	40,918.83	23,434.90	35,405.94	44,289.95	13,861.25	6,771.66		31,714.46	205,306.99		1,047.21			206,444.20	3,793
Dividends unremitted	604.90	11,931.26	1,342.15					752.54	27,510.86					27,510.86	1,083
Interest accrued	144,315.36	50,913.49	77,837.21	197,432.57	18,966.94	6,460.54	10,137.51	23,802.63	529,886.25	\$369.65	51,359.91	36,409.66	2,531.19	90,670.41	620,556.66
Insurance accrued	832.67	3,497.79		130.00	1,093.39			390.00	5,913.85	199.11	72.92	825.00	178.75	1,275.78	7,189.63
Other accrued liabilities	5,651.71	52.90	2,546.34	4,387.86				1,244.99	13,863.80		65.60			65.60	13,949.40
Total Current Liabilities	481,071.21	237,124.03	577,993.13	599,093.49	272,208.48	331,626.73	58,194.88	139,375.28	2,695,697.25	568.76	131,873.61	37,690.76	2,710.78	175,843.91	2,871,541.16
Long-term liabilities:															
Notes payable										55,009.16		97,706.88		152,716.04	152,716.04
Advances payable - associated companies		3,149.42	123,961.27			29,277.17			156,387.86					156,387.86	(128,832.3)
Other advances payable															(53,160.5)
Interest on notes payable		3,149.42	123,961.27			29,277.17			156,387.86	55,009.16		97,706.88		300,103.00	(181,993.3)
Equipment and other long-term obligations:															
Equipment obligations	331,515.67	57,530.44			106,983.47	107,464.37	300.00	24,797.71	728,591.66					292,533.28	728,591.66
Other long-term obligations	58,722.65	15,300.00			37,750.00	1,218.10		12,000.00	124,900.75	117,033.28		165,000.00	10,500.00	417,524.03	417,524.03
Total Equipment and Other Long-term Obligations	390,238.32	72,830.44			144,733.47	108,682.47	300.00	36,797.71	853,582.41	117,033.28		165,000.00	10,500.00	292,533.28	1,146,115.69
Reserves:															
Depreciation and damage reserves	36,091.61	2,121.75	5,529.90	11,929.51					55,642.77						55,642.77
Reserve for state and Federal income taxes															108,672.9
Reserve for contingencies															1,488.0
Reserve for contingent liabilities															12,000.0
Total Reserves	36,091.61	2,121.75	5,529.90	11,929.51					55,642.77						177,803.67
Capital:															
Preferred stock:															
Preferred stock issued				53,320.00	32,300.00			138,000.00	223,620.00					22,800.00	246,420.00
Preferred stock outstanding				53,320.00	32,300.00			138,000.00	223,620.00					22,800.00	246,420.00
Common stock:															
Common stock issued	11,900.00	101,000.00	35,400.00	212,080.00	100,000.00	25,000.00	50,000.00	98,825.00	633,205.00	20,000.00	100,000.00	100,000.00	2,000.00	222,000.00	856,205.00
Common stock outstanding	455.00								455.00						455.00
Common stock subscribed	11,445.00	101,000.00	35,400.00	212,080.00	100,000.00	25,000.00	50,000.00	98,825.00	633,750.00	20,000.00	100,000.00	100,000.00	2,000.00	222,000.00	856,750.00
Surplus and assessments on capital stock	419,486.04			10,000.00					429,486.04						429,486.04
Unpaid stock subscriptions				5,520.00					5,520.00						5,520.00
Total Capital Stock	430,951.04	101,000.00	35,400.00	280,920.00	132,300.00	25,000.00	50,000.00	296,825.00	1,267,376.04	20,000.00	100,000.00	100,000.00	21,800.00	244,800.00	1,537,176.04
Surplus:															
Unappropriated surplus		41,804.70							41,804.70						41,804.70
Unappropriated surplus	352,601.25	269,031.29	304,245.80	1,233,849.08	393,318.87	(16,159.63)	56,975.58	673,841.06	3,267,706.30	11,835.40	156,834.84	31,265.55	31,259.64	231,215.43	3,498,921.73
Unappropriated Surplus	352,601.25	310,928.99	304,245.80	1,233,849.08	393,318.87	(16,159.63)	56,975.58	673,841.06	3,309,601.00	11,835.40	156,834.84	31,265.55	31,259.64	231,215.43	3,540,816.43
Total Capital Stock and Surplus	783,532.29	411,928.99	339,645.80	1,514,769.08	525,618.87	8,840.37	106,975.58	910,666.06	4,601,977.04	31,835.40	256,834.84	131,265.55	56,059.64	476,015.43	5,077,992.47
Total Liabilities and Capital	1,690,903.45	827,354.63	1,046,390.10	2,125,702.05	942,569.82	478,426.74	165,470.46	1,086,839.05	8,363,287.33	204,499.00	391,708.45	431,966.39	60,279.42	1,067,106.66	9,460,395.99

The figures in this statement indicated "per books" are stated as they appear in the companies' books, without verification by us. 2. The assets and liabilities of Consolidated Motor Lines, Inc., and McCarthy Freight System, Inc., are as of May 1, 1941, and April 30, 1941. However the surplus of these companies has been adjusted to April 30, 1941. 3. The Reserve for Contingencies in the arbitrary amount of \$1,000.00 has been provided for each company. These reserves are to provide for all contingencies.

# 11, of the Companies Included in I. C. C. Application

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MORAN TRANSPORTATION CO., INC., ET AL.

Barnwell Whse. & kg. Com- pany	Total non- carrier companies	Total merg- ing companies before adjustments	Adjust- ments (in- cluding elimi- nations) (decrease)	Total merg- ing companies as adjusted	Associated Transport, Inc., 6/30/41	Giving effect transactions		Proforma balance sheet
						Eliminations	Additions	
	\$27,500.00	\$286,690.44	\$3,558.73	\$290,219.17				\$290,219.17
	900.00	197,372.63	(19,171.18)	178,201.45				178,201.45
		45,184.32	79,288.47	124,472.99				124,472.99
\$0.84	54,384.91	1,406,672.82	(222,714.02)	1,243,958.80				1,243,958.80
	1,047.21	206,444.20	3,293.61	209,737.81				209,737.81
		27,510.86	1,083.51	28,594.37				28,594.37
2,531.19	90,670.41	620,556.66	105,629.00	726,185.66				726,185.66
178.75	1,275.78	7,189.63	6,314.70	13,504.33				13,504.33
	65.60	13,949.49	(1,450.82)	12,498.67				12,498.67
2,710.78	175,843.91	2,871,541.16	(44,168.00)	2,827,373.16				2,827,373.16
	152,716.04	152,716.04	(128,832.36)	23,883.68				23,883.68
		156,387.86	(53,160.85)	103,227.01				103,227.01
	152,716.04	309,103.90	(181,993.21)	127,110.69				127,110.69
		728,591.66	138,743.91	867,335.57				867,335.57
10,500.00	292,533.28	417,524.03	(20,118.10)	397,405.93				397,405.93
10,500.00	292,533.28	1,146,115.69	118,625.81	1,264,741.50				1,264,741.50
		55,642.77	19,639.74	75,282.51				75,282.51
			108,672.98	108,672.98				108,672.98
			1,698.79	1,698.79				1,698.79
			12,000.00	12,000.00				12,000.00
		55,642.77	142,001.51	197,644.28				197,644.28
			62,353.51	62,353.51				62,353.51
13,210.78	621,093.23	4,382,403.52	96,819.62	4,479,223.14				4,479,223.14
22,800.00	22,800.00	246,420.00	(62,620.00)	183,800.00		\$183,800.00	\$5,404,900.00	5,404,900.00
			26,000.00	26,000.00		26,000.00	110,700.00	110,700.00
22,800.00	22,800.00	246,420.00	(88,620.00)	157,800.00		157,800.00	5,294,200.00	5,294,200.00
2,000.00	222,000.00	856,265.00	(31,450.00)	824,755.00	890,202.00	824,755.00	650,921.00	720,123.00
		455.00		455.00		455.00	15,472.00	15,472.00
4,900.00	222,000.00	855,750.00	(31,450.00)	824,300.00	60,202.00	824,300.00	644,449.00	704,651.00
		429,486.04	(7,652.54)	421,833.50		421,833.50		
		5,520.00	(5,520.00)					
24,800.00	244,800.00	1,537,176.04	(133,242.54)	1,403,933.50	60,202.00	1,403,933.50	5,938,649.00	5,998,851.00
		41,894.70	25,140.59	67,035.29		67,035.29	472,872.24	472,872.24
31,259.64	231,215.43	3,498,921.73	(89,647.28)	3,409,274.45		3,409,274.45		
31,259.64	231,215.43	3,540,816.43	(44,506.69)	3,496,309.74		3,496,309.74	472,872.24	472,872.24
56,059.64	476,015.43	5,077,992.47	(177,749.23)	4,900,243.24	60,202.00	4,900,243.24	6,411,521.24	6,471,723.24
69,270.42	1,007,108.66	9,460,395.99	(80,929.61)	9,379,466.38	60,202.00	4,900,243.24	6,411,521.24	10,950,946.38

McCarthy Freight System, Inc., are as of May 17, 1941. The assets and liabilities of M. Moran Transportation Lines. These reserves are to provide for all contingencies pursuant to contract, including those indicated in the contract and

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## ASSOCIATED TRANSPORT, INC.

Summary statement of disposition of the proposed issue of preferred and common stock as of April 30, 1941<sup>1</sup>

	Per schedule	Per contract
<b>Preferred Stock:</b>		
Proposed Issue—54,049 shares, par \$100.00—		
Dividend 6%. To be issued as follows:		
(a) To stockholders of the following applicant companies:		
Consolidated Motor Lines, Inc.	\$387,226.58	\$387,200.00
McCarthy Freight System, Inc.	328,274.38	328,300.00
Southern New England Terminals, Inc.	21,408.70	21,400.00
M. Moran Transportation Lines, Inc.	221,414.46	221,400.00
Horton Motor Lines, Inc.	1,178,034.49	1,178,000.00
Brown Equipment & Mfg. Co., Inc.	209,033.54	209,000.00
Conger Realty Company	104,966.09	104,700.00
Barnwell Brothers, Inc.	365,976.13	366,000.00
Barnwell Warehouse & Brokerage Co.	122,206.03	122,200.00
Southeastern Motor Lines, Inc.	79,004.00	79,000.00
Arrow Carrier Corporation	687,685.82	687,700.00
Total Preferred Stock to be Issued to Applicants' Stockholders	3,904,930.22	3,904,900.00
Less: Stock reacquired through acquisition of Barnwell Warehouse & Brokerage Co.		110,750.00
Net Preferred Stock to be Issued to Applicants' Stockholders		3,794,200.00
(b) For Working Capital		1,500,000.00
Total Preferred Stock To Be Issued		\$5,294,200.00
<b>Common Stock:</b>		
Proposed Issue—720,123 shares, Par \$1.00. To be issued as follows:		
(a) To stockholders of the following applicant companies, for subscriptions and acquisition price:		
Consolidated Motor Lines, Inc.	Shares 6,452	Shares 114,620
McCarthy Freight System, Inc.	3,262	57,193
Southern New England Terminals, Inc.	215	3,771
M. Moran Transportation Lines, Inc.	2,808	64,356
Horton Motor Lines, Inc.	8,436	178,698
Brown Equipment & Mfg. Co., Inc.	2,190	46,094
Conger Realty Company	1,476	30,988
Barnwell Brothers, Inc.	2,778	53,039
Barnwell Warehouse & Brokerage Co.	72	16,876
Transportation, Inc.	275	8,335
Southeastern Motor Lines, Inc.	1,054	21,793
Arrow Carrier Corporation	2,278	53,880
Total Common Stock to be Issued to Applicants' Stockholders	31,240	648,643
		679,883 @ \$1.00 679,883.00

<sup>1</sup>See footnotes on p. 1444.

## ASSOCIATED TRANSPORT, INC.

## Summary statement of disposition of the proposed-issue preferred and common stock as of April 30, 1941—Continued

1708 Total Preferred Stock to be Issued (Brought forward)		\$3,294,200.00
Total Common Stock to be Issued to Applicants' Stockholders	\$679,885.00	
Less: Stock reacquired through acquisition of Barnwell Warehouse & Brokerage Co.	15,472.00	
Net Common Stock to be issued to Applicants' Stockholders	664,411.00	
(b) For Subscription to B. M. Seymour	31,240.00	
(c) To The Transport Company, for records, etc.	9,000.00	
Total Common Stock to be Issued		704,651.00
Total Preferred and Common Stock to be Issued		5,998,851.00
Assets and Liabilities acquired in consideration of the above assets:		
Cash (including \$1,500,000.00 for sale of preferred stock)	\$2,025,550.75	
Accounts and Notes Receivable	1,747,097.27	
Inventories of Tires, Parts, and Supplies	667,172.36	
Revenue and Other Equipment (Net, after reserve for depreciation)	4,268,011.35	
Land and Buildings (Net, after depreciation reserves)	1,248,387.44	
Prepaid Tires	487,552.57	
Other Prepaid Assets	400,009.03	
Organization Expense	107,135.61	
Total Assets	10,950,956.38	
Less: Liabilities and Reserves	4,479,223.14	
Net Assets in Excess of Liabilities		6,471,733.24
Excess of Net Assets over Preferred and Common Stock Issue, Represents unearned surplus		472,872.24

<sup>1</sup> This statement includes all stock subscriptions and gives effect to the disbursements of Associated Transport, Inc., to June 30, 1941.

The preferred and common stock issues, as indicated above, are based on the adjusted balance sheets and income statements, subject to such modifications as are contained in the respective company contracts.

<sup>2</sup> This stock to be cancelled upon reacquisition.

## ASSOCIATED TRANSPORT, INC.

Proforma Balance Sheet as of June 30, 1941, Giving Effect to the Acquisition of the Companies Included in the I. C. C.  
Application as of April 30, 1941

ASSETS		LIABILITIES AND CAPITAL	
Cash	\$1,446,446.39	Liabilities	0
Notes Receivable	15,620.00	Capital Stock and Surplus:	
Subscriptions Receivable	2,278.00	Preferred Stock (to be issued)	\$5,404,900.00
Investments:		Less Treasury Stock	110,700.00
Carrier Companies:		Net Preferred Stock Outstanding	\$5,294,200.00
Consolidated Motor Lines, Inc.	\$742,286.96	Common Stock Issued	\$71,480.00
McCarthy Freight System, Inc.	422,021.83	Common Stock (To be issued)	\$648,643.00
M. Moran Transportation Lines, Inc.	331,451.91	Less Treasury Stock	15,472.00 633,171.00
Horton Motor Lines, Inc.	1,505,342.06	Net Common Stock Outstanding	704,651.00
Barnwell Bros., Inc.	491,436.29	Total Preferred and Common Stock	5,998,851.00
Transportation, Inc.	(48,203.12)	Unearned Surplus	472,872.24
Southeastern Motor Lines, Inc.	99,811.32		
Arrow Carrier Corp.	917,887.92		
Total Carrier Companies	\$4,462,035.17		
Non-Carrier Companies:			
Southern New England Terminal, Inc.	\$29,434.98		
Brown Equipment & Mfg. Co.	262,145.40		
Conger Realty Co.	131,318.31		
Barnwell Wheel & Bkg. Co.	15,309.38		
Total Non-Carrier Companies	438,208.07		
Total Investments	4,900,243.24		
Organization and Other Deferred Expenses	107,135.61		
Total Assets	6,471,723.24	Total Capital	6,471,723.24

Note:—The above investments are equal to the adjusted capital and surplus, as reflected in the adjusted balance sheets herein.

**Proforma Statement of Income, Profit, and Loss Based on Estimated Operations for the Year 1941, Giving Effect to Proposed Economies and Nonrecurring Expenses**

	Estimated operations for the year 1941 per Exhibit B-6		Total estd. oper. for the year 1941 per Ex- hibit B-6	Proposed econom- ies	Proforma opera- tions
	Carrier cos.	Noncarrier cos.			
Operating revenue	\$24,275,635.04		\$24,275,635.04		\$24,275,635.04
Sales		\$914,018.80	\$914,018.80		\$914,018.80
Rental income		176,811.63	176,811.63		176,811.63
Total	24,275,635.04	1,090,830.43	25,366,465.47		25,366,465.47
Expenses:					
Equipment, Maintenance, and Garage Expenses	2,529,918.92		2,529,918.92	\$450,000.00	2,079,918.92
Transportation Expenses	5,579,311.78		5,579,311.78		5,579,311.78
Terminal Expenses	6,208,649.51	13,089.57	6,221,739.08	550,000.00	5,671,739.08
Sales, Tariff, and Advertis- ing Expenses	789,098.27		789,098.27	150,000.00	639,098.27
Insurance and Safety Ex- penses	1,201,690.62	5,543.18	1,207,233.80	275,000.00	932,233.80
Administrative and General Expenses	1,830,269.35	51,096.59	1,881,335.94	175,000.00	1,706,335.94
Depreciation Expenses	1,017,538.28	15,647.65	1,033,185.93		1,033,185.93
Amortization Chargeable to Operations	3,734.44		3,734.44		3,734.44
Operating Taxes and Li- censes	1,935,902.37	23,379.39	1,959,281.76		1,959,281.76
Operating Rents—Net	478,860.72		478,860.72		478,860.72
Total Expenses	21,574,974.26	108,726.38	21,683,700.64	1,600,000.00	20,083,700.64
Cost of Sales		691,654.67	691,654.67		691,654.67
Total Expenses and Cost of Sales	21,574,974.26	800,381.05	22,375,355.31	1,600,000.00	20,775,355.31
Net Operating Income	2,700,660.78	290,449.38	2,991,110.16	1,600,000.00	4,591,110.16
Other Income	29,350.20		29,350.20		29,350.20
Gross Income	2,730,010.98	290,449.38	3,020,460.36	1,600,000.00	4,620,460.36
Income deductions:					
Interest	47,554.24	13,783.52	61,337.76		61,337.76
Other Deductions	29,850.62		29,850.62		29,850.62
Total Income Deductions	77,404.86	13,783.52	91,188.38		91,188.38
Net Profit Before Taxes	2,652,606.12	276,665.86	2,929,271.98	1,600,000.00	4,529,271.98
Provision for Income Taxes	887,077.36	81,591.36	968,668.72	800,000.00	1,768,668.72
Net Profit After Taxes	1,765,528.76	195,074.50	1,960,603.26	800,000.00	2,760,603.26
Add:					
Nonrecurring Expenses	187,103.68	5,000.00	192,103.68		192,103.68
Less: State and Federal Taxes	72,926.79	1,423.40	74,350.19		74,350.19
	114,176.89	3,576.60	117,753.49		117,753.49
Net Profit After Taxes Excluding Nonrecurring Expenses	1,879,705.65	198,651.10	2,078,356.75	800,000.00	2,878,356.75

Taxes on proposed economies have been estimated at 50%.

## ASSOCIATED TRANSPORT, INC.

## Statement Showing Basis for Distribution of the Preferred and Common Stock To Be Issued to the Subscribers and Companies Included in I. C. C. A.

Name	Net worth adjusted to Apr. 30, 1941	Depreciation adjustments per schedule 3E		Net worth eliminating col. 2 minus 3	Schedule J adjust- ments, preferred stock	Total preferred stock	Adjusted net income		Schedule I adjustments		Total net income and net sch. I adjustments after taxes (9 plus 10)	6% of preferred (col. 6)	Net income available for common stock (col. 11 minus (2))	Number of common shares based on net income (half of col. 13)	Schedule J adjust- ments for common stock		Number common shares be- on 3E adjustment (4) of minus
		Deprecia- tion	24% tax				Before Fed. income and excess- profits taxes	After Fed. income and excess- profits taxes	Before Fed. income and excess- profits taxes	After Fed. income and excess- profits taxes					Provision	Adjusted	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Consolidated Motor Lines, Inc.	\$742,286.96	\$10,800.19	\$2,606.45	\$734,033.22		\$587,226.58	\$401,816.51	\$238,809.46	\$57,347.16	\$25,003.36	\$263,812.85	\$35,233.60	\$228,579.25	114,290	Shares	Shares	
McCarthy Freight System, Inc.	422,021.83	15,366.91	3,688.06	410,342.98		328,274.38	202,887.24	125,172.73	16,832.50	7,976.17	133,148.90	19,606.46	113,452.46	56,726			
Southern New England Terminals, Inc.	29,434.98	3,518.56	844.45	26,760.87		21,408.70	7,216.53	6,108.30	3,000.00	2,505.00	8,613.30	1,284.32	7,328.78	3,694			
M. Moran Transportation Lines, Inc.	331,451.91	71,932.41	17,268.58	276,768.08		221,414.46	105,530.20	79,622.93			79,622.93	13,284.87	66,338.06	33,169	29,000	29,000	
Horton Motor Lines, Inc.	1,505,342.06	43,156.51	10,357.56	1,472,543.11		1,178,034.49	511,575.91	380,511.53	48,235.00	35,925.43	425,436.96	70,682.20	354,754.76	177,377			
Brown Equipment & Mfg. Co., Inc.	262,145.40	1,123.00	269.52	261,292.92		209,033.54	139,400.29	103,591.11	2,000.00	1,071.60	104,662.51	12,542.01	92,120.70	46,060			
Conger Realty Company	131,318.31	639.08	153.38	130,832.61		104,696.00	94,659.41	68,217.75			68,217.75	6,279.96	61,937.79	30,969			
Barnwell Brothers, Inc.	491,436.29	44,692.28	10,726.15	457,470.16		365,976.13	156,902.13	119,245.62	8,420.32	6,073.08	125,318.70	21,958.57	103,360.13	51,680			
(1) Barnwell Warehouse & Brokerage Co.	15,306.38	1,219.52	292.68	14,382.54	\$110,700.00	122,206.06	4,021.17	3,424.03			3,424.03	690.96	2,733.67	1,367	17,800	15,452	
Transportation, Inc.	(48,203.12)			(48,203.12)			(22,051.17)	(22,051.17)			(22,051.17)				5,500	5,500	
(2) Southeastern Motor Lines, Inc.	99,811.32	1,389.90	333.57	98,754.99		79,004.00	51,641.51	36,681.75	15,475.00	8,643.02	45,324.77	4,740.24	40,584.53	20,292	2,000	1,501	
Acron Carrier Corporation	917,887.92	76,685.05	18,404.41	839,607.28		687,685.82	155,027.71	117,821.06	40,793.70	30,565.83	148,376.89	41,261.15	107,115.74	53,558			
Subtotal:	4,900,243.24	270,603.41	64,944.81	4,664,584.64			2,808,627.44	1,299,155.13	192,103.68	117,753.49	1,383,908.62	227,653.94	1,178,305.85				
A. M. Seymour																	
The Transport Company (records, etc.)																	
Total preferred and common to be issued:						3,904,936.22								589,152		51,308	8,1
Less: Preferred and common held by Barnwell Ware- house & Brokerage Co.						110,700.00											
Net preferred and common to be outstanding:						3,794,236.22											

Note: See notes on following page.

# ASSOCIATED TRANSPORT, INC.

Statement Showing Basis for Distribution of the Preferred and Common Stock To Be Issued to the Subscribers and Companies Included in I. C. C. Application

Net worth adjusted to Apr. 30, 1941	Depreciation adjustments per schedule 3E		Net worth eliminating col. 2 minus 3	Schedule J adjust- ments, preferred stock	Total preferred Stock	Adjusted net income		Schedule I adjustments		Total net income and net sch. I adjustments after taxes (9 plus 10)	6% of preferred (col. 6)	Net income available for common stock (col. 11 minus 12)	Number of common shares based on net income (half of col. 13)	Schedule J adjust- ments for common stock		Number of common shares based on 3E net adjustments (4% of 2 minus 3)	Total common shares based on contract excluding subscription shares (cols. 14 to 17)	Subscription shares	Total common shares to be issued (col. 18 and 19)	Percent to total			
	Deprecia- tion	24% tax				Before Fed. income and excess- profits taxes	After Fed. income and excess- profits taxes	Before Fed. income and excess- profits taxes	After Fed. income and excess- profits taxes					Provision	Adjusted								
																					1	2	3
\$742,296.96	\$10,990.19	\$2,606.45	\$734,033.22		\$587,226.58	\$401,816.51	\$238,809.49	\$57,347.16	\$25,003.36	\$263,812.85	\$35,233.60	\$228,579.25	114,290	Shares	Shares								
422,021.83	15,366.91	3,688.06	410,342.88		328,274.38	202,887.24	125,172.73	16,832.50	7,976.17	133,148.90	19,696.46	113,452.46	56,726			330	114,620	6,452	121,072	17.18			
29,434.98	3,518.56	844.45	26,760.87		21,408.70	7,216.53	6,108.30	3,000.00	2,505.00	8,613.36	1,284.52	7,328.78	3,664			467	57,193	3,477	64,441	9.14			
331,451.91	71,932.41	17,268.58	276,768.08		221,414.46	105,530.20	79,622.93			79,622.93	13,284.87	66,338.06	33,169			107	3,771						
1,505,342.06	43,156.51	10,357.56	1,472,543.11		1,178,034.49	511,575.91	389,511.53	48,235.00	35,925.43	425,436.96	70,682.20	354,754.76	177,377	29,000	29,000	2,187	64,356	2,808	67,164	9.53			
262,145.40	1,125.00	269.32	261,291.92		209,033.54	139,400.29	103,591.11	2,000.00	1,071.60	104,662.71	12,542.01	92,120.70	46,000			1,312	178,689						
181,318.31	639.08	153.38	180,832.61		104,696.09	94,650.41	68,217.75			68,217.75	6,279.96	61,937.79	30,909			34	46,094	12,102	267,873	38.01			
491,436.29	44,692.28	10,726.15	457,470.16		365,976.13	156,902.13	119,245.62	8,420.32	6,073.08	125,318.70	21,958.57	103,360.13	51,680			19	30,988						
15,386.38	1,219.52	292.08	14,382.54	\$110,700.00	122,206.03	4,021.17	3,424.03			3,424.03	690.36	2,733.67	1,367			1,359	53,039	2,794	72,709	10.32			
(48,203.12)			(48,203.12)			(22,051.17)	(22,051.17)			(22,051.17)				17,800	15,472	37	16,876						
90,811.32	1,389.90	333.57	98,754.00		79,004.00	51,641.51	36,681.75	15,475.00	8,643.02	45,324.77	4,740.24	40,584.53	20,292	5,500	5,335		5,335	275	5,610	.80			
917,897.92	76,685.05	18,404.41	859,607.28		687,685.82	155,027.71	117,821.06	40,793.70	30,555.85	148,376.80	41,261.15	107,115.74	53,558	2,000	1,501		21,793	1,054	22,847	3.24			
4,900,243.24	270,603.41	64,944.81	4,665,695.04			1,808,627.44	1,266,155.13	192,103.68	117,753.49	1,383,908.62	227,653.94	1,178,305.85				2,331	55,889	2,278	58,167	8.25			
																		31,240	679,883	96.48			
					3,904,935.22													31,240	81,240	4.43			
					110,700.00													9,000	9,000	1.28			
					3,794,230.22																		
																589,152							
																51,308	8,183	648,643	62,480	720,123	102.19		
																			15,472		2.19		
																			704,651		100.00		

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MCLEAN TRUCKING CO., INC., ET AL.

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ASSOCIATED TRANSPORT, INC.

# Notes Supporting Statement Showing Basis for Distribution of the Preferred & Common Stock to Be Issued to the Subscribers and Companies Included in I. C. C. Application

- (1) The net worth of Barnwell Warehouse & Brokerage Co.  
 at April 30, 1941, was \$55,000.38  
 It includes the investment in Barnwell Brothers, Inc., at 40,300.00

Eliminating this investment leaves the above net worth of 15,300.38

Schedule J of Barnwell Warehouse contract provides that 1,390 shares of preferred and 17,800 shares of common stock are to be issued for the company subject to adjustment to the extent of 25%. The 1,390 shares of preferred and the 17,800 shares of common have been accordingly reduced to 1,222 preferred shares and 16,876 shares of common computed as follows:

Net worth after adjustments (Pfd) and Net profit (Com.)	Com.	Pfd.
	\$14,382.54	\$3,424.03
80% of net worth	11,506.00	
6% of preferred		690.38
Available for common stock		2,733.67
Number of common shares to be issued for Barnwell Warehouse & Brokerage Co. profit exclusive of Barnwell Brothers, Inc. stock		sh. 1,397
Common stock to be issued for Schedule 3E adjustments		37
Amount of preferred and common stock to be paid to Barnwell Warehouse & Brokerage Co. for its stockholdings of Barnwell Brothers, Inc.	110,700.00	15,472
Total stock to be issued to Barnwell Warehouse & Brokerage Co.	122,206.00	16,876

- (2) Re: Southeastern Motor Lines, Inc.:

(a) Pursuant to Schedule J, no common stock has been allotted to this company for the depreciation adjustment eliminated from the net worth.  
 (b) The reduction of the 2,000 shares of common to 1,501 shares is also in accordance with Schedule J. The adjusted profit of \$36,681.75 includes a depreciation adjustment of \$1,786.30. Deducting the taxes of \$752.97 which accrued on this depreciation adjustment leaves the net depreciation adjustment of \$998.11 appearing in the adjusted profit. Fifty percent of this increase equals 499 shares, which subtracted from the 2,000 shares leaves the 1,501 shares indicated herein.

## ASSOCIATED TRANSPORT, INC.

Comparative Schedule of Revenue Equipment of the Carrier Companies Included in I. C. C. Application After Giving Effect to Contract Depreciation  
Rates as of April 30, 1940 and 1941

		Number of vehicles					Cost					Book value				
		Trucks	Tractors	Trailers	Service cars	Total	Trucks	Tractors	Trailers	Service cars	Total	Trucks	Tractors	Trailers	Service cars	Total
Consolidated Motor Lines, Inc.:																
Adjusted	1940	100	207	292	23	631	\$133,248.00	\$625,031.73	\$318,827.00	\$12,323.02	\$1,089,429.84	\$39,383.40	\$233,977.98	\$199,508.00	\$3,375.42	\$476,245.80
Adjusted	1941	74	266	339	19	697	103,968.68	798,123.91	414,877.46	13,825.32	1,330,795.37	18,541.14	334,979.65	293,788.93	4,788.80	652,087.52
Per Books	1941						109,968.68	798,123.91	414,877.46	13,825.32	1,330,795.37	15,883.08	334,816.53	294,621.71	3,806.13	649,127.51
Average Per Adjusted	1941						1,404.96	3,011.78	1,223.83	727.65	1,909.32	230.56	1,264.08	896.57	252.04	935.55
McCarthy Freight System, Inc.:																
Adjusted	1940	83	87	130	16	336	162,840.91	328,737.37	216,995.19	11,612.89	720,186.36	39,679.36	124,951.77	112,912.88	2,422.92	279,966.93
Adjusted	1941	71	107	186	16	380	137,806.42	362,344.95	268,006.20	16,498.42	784,685.99	21,539.56	144,946.58	159,709.67	10,266.54	336,462.35
Per Books	1941						137,258.44	366,646.96	264,836.60	15,074.42	783,816.42	14,917.86	136,394.98	158,464.96	9,299.44	319,067.24
Average Per Adjusted	1941						1,941.78	3,386.40	1,440.89	1,029.27	2,064.96	303.37	1,354.64	858.65	641.66	885.43
M. Moran Transportation Lines, Inc.:																
Adjusted	1940	14	159	272	9	455	15,466.73	280,787.43	287,030.36	6,538.76	589,823.28	1,491.25	105,924.80	123,095.12	3,583.33	238,094.50
Adjusted	1941	8	214	338	14	574	7,965.19	371,707.50	436,438.79	7,859.84	823,971.32	428.88	191,907.47	239,815.55	4,234.39	436,386.29
Per Books	1941						7,965.19	373,109.09	446,049.60	7,859.84	836,983.72	504.21	204,050.15	245,019.30	3,913.47	453,487.13
Average Per Adjusted	1941						995.67	1,736.95	1,291.24	761.41	1,435.99	53.61	896.76	709.51	302.46	760.25
Horton Motor Lines, Inc.:																
Adjusted	1940	93	229	246	21	589	117,017.55	758,274.87	636,329.54	16,768.01	1,528,389.97	58,131.99	543,731.19	517,019.55	11,165.68	1,130,048.41
Adjusted	1941	115	263	276	26	680	166,195.67	831,673.98	750,801.45	22,915.03	1,771,586.13	91,000.54	602,586.77	574,156.03	16,792.37	1,284,536.71
Per Books	1941						173,702.83	799,391.51	783,174.43	22,354.64	1,780,623.41	84,745.92	624,779.40	566,074.14	15,663.92	1,291,263.38
Average Per Adjusted	1941						1,445.18	3,162.26	2,720.29	881.35	2,805.27	791.31	2,291.30	2,080.27	645.89	1,889.02
Barnwell Brothers, Inc.:																
Adjusted	1940	20	109	125	5	268	33,895.66	286,710.79	163,517.52	4,607.25	488,731.22	14,795.53	128,787.44	98,054.71	3,027.63	244,665.31
Adjusted	1941	33	127	150	5	315	41,560.27	374,101.82	219,788.95	4,641.09	640,092.04	21,136.44	173,121.05	129,148.53	1,986.24	325,392.26
Per Books	1941						40,584.55	363,592.60	236,398.45	4,641.09	675,186.60	16,728.81	149,776.77	128,072.92	2,159.00	296,737.50
Average Per Adjusted	1941						1,259.40	2,945.69	1,465.26	928.20	2,032.04	640.50	1,363.16	860.99	397.25	1,032.99
Transportation, Inc.:																
Adjusted	1940	59	82	70	7	218	52,167.78	121,488.60	92,532.88	4,973.32	271,162.58	17,009.95	69,134.97	71,285.11	1,924.80	159,354.83
Adjusted	1941	57	91	80	6	234	50,672.53	171,704.57	124,062.72	3,406.98	349,846.80	15,399.64	117,529.47	100,193.40	1,794.23	234,906.74
Per Books	1941						40,017.11	164,546.40	123,388.08	3,406.98	331,358.57	11,819.86	102,915.69	98,210.84	1,616.49	214,562.88
Average Per Adjusted	1941						888.99	1,886.86	1,550.78	567.83	1,495.07	299.99	1,291.53	1,252.42	289.04	1,003.87
Southeastern Motor Lines, Inc.:																
Adjusted	1940	19	20	20	3	61	10,671.50	31,722.05	11,203.79	2,694.26	56,291.60	7,820.08	24,057.31	8,415.01	1,916.35	42,208.75
Adjusted	1941	20	29	27	4	80	14,877.50	58,153.28	27,352.02	3,626.20	103,989.00	9,242.60	41,156.23	22,959.87	3,034.99	76,393.69
Per Books	1941						12,072.47	56,869.08	27,022.02	3,626.20	99,589.77	7,820.65	39,967.47	21,544.88	3,139.98	72,472.98
Average Per Adjusted	1941						743.87	2,004.59	1,013.04	906.55	1,299.86	462.13	1,419.18	850.33	738.75	954.92
Arrow Carrier Corporation:																
Adjusted	1940	87	83	97	7	274	483,280.61	468,678.06	260,330.04	18,566.92	1,230,861.63	43,760.99	285,960.46	172,947.24	2,768.34	505,437.03
Adjusted	1941	85	89	97	9	280	481,778.29	479,615.57	267,712.76	18,278.32	1,247,384.94	37,362.75	252,789.43	153,401.08	5,061.57	448,614.83
Per Books	1941						482,945.71	474,830.68	267,712.76	18,278.32	1,243,767.47	11,390.61	196,011.04	148,392.25	4,948.78	360,742.68
Average Per Adjusted	1941						5,667.98	5,388.93	2,759.92	2,030.91	4,454.94	439.56	2,840.33	1,581.45	562.30	1,602.19
Total carrier companies:																
Total Adjusted	1940	492	976	1,273	91	2,832	1,008,594.74	2,901,430.90	1,986,796.41	78,084.43	5,974,876.48	222,072.55	1,516,525.92	1,305,238.62	30,184.47	3,074,021.56
Total Adjusted	1941	463	1,185	1,403	99	3,240	1,004,884.55	3,447,405.58	2,509,049.35	91,021.11	7,052,351.59	214,641.55	1,859,016.65	1,673,153.06	47,990.13	3,794,771.39
Total Per Books	1941						998,514.98	3,429,110.23	2,565,429.40	89,096.72	7,082,121.33	163,811.00	1,788,712.03	1,660,401.00	44,537.27	3,657,461.30
Total Average Per Adjusted	1941						2,170.39	2,909.21	1,680.53	919.42	2,176.65	463.59	1,568.79	1,120.78	484.44	1,171.23

Schedule of Profit on Sales and Trades of Revenue Equipment by the Companies Included in I. C. C. Application for the Twelve Months Ended April 30, 1941, as Adjusted and Per Books

Name	Number of—		Profit on—		Average profit		Total book value of equipment		Total allowance for equipment	
	Trades	Sales	Trades	Sales	Trades	Sales	Trades	* Sales	Trades	Rates
Consolidated Motor Lines—Per Books	125	32	\$40,524.97	\$5,094.49	\$234.20	\$153.89	\$18,030.03	\$21,445.49	\$53,355.00	\$26,529.98
Consolidated Motor Lines—Adjusted	125	21	34,444.53	4,805.92	275.56	219.47	24,118.87	19,671.95	58,355.00	24,479.98
Adjusted Average per Unit							192.39	925.24		
McCarthy Freight System, Inc.—Per Books	30	30	14,855.41	2,323.69	495.21	77.45	9,021.59	5,023.40	22,878.00	1,165.71
McCarthy Freight System, Inc.—Adjusted	30	30	6,517.45	2,017.15	217.25	67.34	12,383.55	5,453.06	18,901.00	10,470.21
Adjusted Average per Unit							411.75	251.77	600.03	
M. Moran Transportation Lines—Per Books		51		\$,010.38	98.24	98.24		9,154.04		14,164.43
M. Moran Transportation Lines—Adjusted		52		(3,004.40)	(57.78)	(57.78)		18,050.17		15,034.77
Adjusted Average per Unit								347.29		
Horton Motor Lines, Inc.—Per Books	9	73	1,515.52	4,613.54	198.50	63.20	3,975.45	13,023.91	5,492.00	17,687.45
Horton Motor Lines, Inc.—Adjusted	9	73	1,369.54	(6,669.37)	154.39	(91.36)	6,102.49	24,395.52	5,492.00	17,687.45
Adjusted Average per Unit							450.83	332.97	610.22	
Barnwell Brothers, Inc.—Per Books		26		271.64		10.45		7,490.21		7,761.85
Barnwell Brothers, Inc.—Adjusted		14		1,019.55		108.54		6,242.30		7,761.85
Adjusted Average per Unit								445.98		
Transportation, Inc.—Per Books	47		7,157.23		152.28		7,585.12		14,742.34	
Transportation, Inc.—Adjusted	47		(4,994.39)		(104.99)		18,676.73		14,742.34	
Adjusted Average per Unit							418.65		313.67	
Southeastern Motor Lines—Per Books	5		1,020.75		204.15		1,594.10		2,524.85	
Southeastern Motor Lines—Adjusted	5		1,367.91		279.58		1,126.94		2,524.85	
Adjusted Average per Unit							235.39		504.97	
Arrow Carrier Corporation—Per Books	4	2	(200.17)	2,986.94	(72.54)	1,493.47	2,137.17	9,987.66	1,847.00	12,874.00
Arrow Carrier Corporation—Adjusted	4	2	328.54	1,501.92	82.14	750.96	1,518.46	11,372.08	1,847.00	12,874.00
Adjusted Average per Unit							379.62	5,668.04	461.75	6,437.00
Total—Per Books	220	214	64,755.70	20,290.68	294.48	94.52	42,253.49	69,024.11	107,039.19	89,314.79
Total—Adjusted	220	192	39,143.58	(26.23)	177.93	(.14)	62,918.61	185,304.49	102,082.19	86,278.26

## ASSOCIATED TRANSPORT, INC.

## Comparative Statement of Revenue, Depreciation, and Net Income Before and After Taxes of the Companies Included in I. C. C. Application for the Years 1932 to 1941, inclusive

	1932	1933	1934	1935	1936	1937	1938	1939	1940	Fiscal year 1941		Year 1941 estimated	4 months ended Apr. 30th.	
										Per books	Adjusted		1940	1941
<b>Consolidated Motor Lines, Inc.:</b>														
Revenue	\$1,218,996.57	\$1,394,231.29	\$1,677,121.04	\$1,869,226.69	\$2,156,126.91	\$2,778,533.73	\$3,767,746.25	\$4,511,455.85	\$4,565,539.36	\$5,082,633.66	\$5,082,725.36	\$5,753,670.92	\$1,578,776.52	\$2,075,670.92
Depreciation—net	75,234.52	78,839.97	90,545.85	55,779.65	109,298.78	170,641.54	185,022.19	193,351.32	197,283.41	173,698.80	178,536.30	190,790.32	78,773.95	55,189.32
Net Income Before Taxes	4,637.89	(80,432.17)	(9,894.11)	60,237.08	(30,721.59)	(121,200.34)	87,190.15	86,108.48	188,063.00	433,264.03	401,816.51	651,433.30	16,902.27	262,083.30
Net Income After Taxes	4,202.91	(80,432.17)	(9,894.11)	52,047.33	(30,721.59)	(121,200.34)	70,568.91	71,971.42	120,331.54	306,635.95	288,808.49	378,254.71	16,902.27	238,196.68
<b>McCarthy Freight System, Inc.:</b>														
Revenue	439,612.76	474,661.71	587,092.23	725,328.43	896,699.55	954,345.65	1,197,622.26	1,682,304.81	1,901,634.04	2,135,154.59	2,133,992.56	2,472,990.53	532,385.15	698,772.43
Depreciation—net	49,441.72	50,290.05	57,783.01	62,511.34	81,432.09	85,215.60	90,637.35	106,737.59	114,389.57	80,906.36	110,682.65	129,218.48	35,647.16	22,405.48
Net Income Before Taxes	6,544.29	(6,013.66)	(2,356.46)	20,624.20	44,734.39	(39,863.36)	20,297.00	81,891.72	132,898.28	214,600.37	202,867.24	238,772.96	15,116.77	79,357.96
Net Income After Taxes	4,882.95	(6,013.66)	(2,636.24)	14,817.05	39,857.27	(39,853.36)	17,397.00	68,448.04	88,291.02	170,162.16	125,172.73	155,906.05	15,116.77	79,357.96
<b>M. Moran Transportation Lines, Inc.:</b>														
Revenue	517,905.36	693,713.40	824,162.48	1,241,658.80	1,768,395.23	2,193,951.80	1,946,182.53	2,535,316.43	2,914,859.57	3,018,608.42	3,018,234.37	3,712,604.41	836,331.66	1,040,080.41
Depreciation—net	20,157.10	45,779.02	54,908.42	73,766.35	120,901.70	168,349.02	127,275.09	112,781.47	118,388.72	113,503.05	116,467.87	190,105.36	34,690.20	49,105.36
Net Income Before Taxes	26,411.80	(26,765.04)	2,949.11	37,220.09	(1,683.23)	(48,250.77)	24,951.17	85,582.65	54,222.95	122,239.05	105,530.20	171,275.99	(3,255.00)	10,979.99
Net Income After Taxes	25,367.42	(26,765.04)	2,543.61	32,102.33	(1,683.23)	(48,250.77)	21,433.36	67,830.01	39,954.21	92,239.05	79,622.93	115,025.45	(3,255.00)	7,269.35
<b>Horton Motor Lines, Inc. (19 Months ended 2-31-38):</b>														
Revenue	253,354.40	497,027.47	657,159.95	880,953.79	1,200,859.65	2,654,719.18	2,813,477.23	3,825,663.40	4,290,093.09	4,710,637.83	4,718,697.66	5,775,076.35	1,300,152.38	1,705,696.52
Depreciation—net	27,097.08	44,262.25	55,545.03	62,573.76	77,350.22	202,243.78	181,782.80	235,067.87	256,854.71	249,967.72	249,825.07	237,200.92	89,707.07	82,840.08
Net Income Before Taxes	12,519.48	30,465.99	(1,244.54)	74,506.03	164,814.79	148,120.60	334,509.03	503,244.47	308,907.81	492,514.80	511,575.91	908,572.82	70,450.58	266,628.54
Net Income After Taxes	8,303.61	13,514.31	(6,003.42)	63,100.43	136,648.63	107,263.36	265,390.65	302,540.95	197,044.45	334,837.80	389,511.33	674,614.89	70,450.58	208,204.08
<b>Barnwell Brothers, Inc.:</b>														
Revenue	346,466.69	485,365.65	563,064.51	755,766.76	1,076,070.32	1,100,453.94	1,385,252.70	1,879,089.51	2,066,670.71	2,258,022.84	2,256,673.50	2,583,836.20	641,454.07	832,836.20
Depreciation—net	20,091.10	36,905.52	37,152.50	47,855.85	82,711.24	97,196.58	77,869.81	86,861.13	114,617.60	120,696.59	94,543.04	105,354.13	29,273.14	35,354.13
Net Income Before Taxes	3,190.87	19,074.69	1,935.18	43,520.37	54,626.09	(43,560.91)	470,622.07	100,607.59	84,044.75	129,663.39	156,602.13	300,153.64	(3,728.79)	94,153.64
Net Income After Taxes	2,473.62	15,087.37	1,535.24	34,346.26	47,053.31	(43,560.91)	54,343.64	123,409.88	67,845.01	119,245.62	119,245.62	216,482.82	(3,728.79)	67,907.83
<b>Transportation, Inc.:</b>														
Revenue	(?)	(?)	(?)	(?)	(?)	619,919.38	750,483.12	1,063,736.80	1,207,691.78	1,339,181.94	1,331,850.14	1,716,820.86	370,945.07	501,535.63
Depreciation—net	(?)	(?)	(?)	(?)	(?)	47,553.04	44,564.27	46,020.62	56,259.48	61,565.53	58,496.92	79,212.86	19,616.88	24,762.88
Net Income Before Taxes	(?)	(?)	(?)	(?)	(?)	(93,560.03)	355.97	(13,317.00)	(41,383.60)	(12,789.70)	(22,051.17)	35,019.77	(22,601.03)	6,192.87
Net Income After Taxes	(?)	(?)	(?)	(?)	(?)	(93,560.03)	335.60	(13,601.20)	(41,562.60)	(12,789.70)	(22,051.17)	27,538.37	(22,601.03)	5,031.47
<b>1516 Southeastern Motor Lines, Inc.:</b>														
Revenue	(?)	(?)	(?)	(?)	(?)	183,251.63	308,304.44	430,774.03	478,486.08	478,511.39	543,459.21	134,441.02	181,153.07	250,520.52
Depreciation—net	(?)	(?)	(?)	(?)	(?)	2,696.83	9,134.33	14,798.78	16,296.04	14,086.72	17,911.56	4,483.26	5,970.52	15,970.52
Net Income Before Taxes	(?)	(?)	(?)	(?)	(?)	9,412.39	35,761.29	36,667.97	46,870.43	51,641.51	70,674.60	18,802.16	26,558.20	15,970.52
Net Income After Taxes	(?)	(?)	(?)	(?)	(?)	8,008.40	28,509.76	27,405.38	38,361.42	36,681.75	60,552.46	18,802.16	26,558.20	15,970.52
<b>Arrow Carrier Corporation:</b>														
Revenue	686,018.93	724,836.82	783,320.07	790,291.61	860,110.70	979,645.35	1,090,115.56	1,510,477.48	1,468,001.13	1,558,936.89	1,558,917.51	1,718,976.66	475,107.87	566,043.63
Depreciation—net	63,833.12	73,362.57	81,426.43	79,325.14	91,970.48	64,613.48	80,341.05	99,973.76	102,059.86	88,107.80	105,121.37	94,745.65	34,973.61	31,021.55
Net Income Before Taxes	38,244.56	61,674.20	77,792.07	53,524.37	6,565.94	(23,181.52)	38,833.28	147,134.77	92,564.17	147,907.98	155,027.71	196,703.04	16,319.40	71,063.21
Net Income After Taxes	32,580.75	49,982.67	66,907.45	45,805.05	5,582.79	(23,181.92)	30,595.94	117,134.03	70,690.51	126,004.32	137,821.06	137,094.31	16,319.40	71,063.21
<b>Totals:</b>														
Revenue	3,443,025.31	4,200,836.34	5,092,520.82	6,263,226.08	8,018,262.36	11,281,509.03	13,104,131.26	17,396,548.72	18,705,294.41	20,567,692.25	20,559,692.51	24,275,635.04	5,867,544.14	7,650,988.81
Depreciation—net	255,514.64	329,369.38	367,361.24	383,811.49	563,679.51	840,913.04	790,219.39	889,908.09	974,751.13	832,879.91	928,514.97	1,017,538.28	327,437.20	306,649.32
Net Income Before Taxes	94,538.35	(11,995.99)	69,181.19	289,632.14	238,336.39	(221,496.73)	589,171.06	1,086,713.57	855,835.28	1,623,699.35	1,563,330.04	2,652,066.12	103,006.46	817,057.71
Net Income After Taxes	77,811.26	(34,626.72)	52,452.53	242,218.47	196,737.18	(263,343.97)	498,005.69	856,243.49	570,188.52	1,221,168.44	1,084,813.94	1,765,528.76	103,006.46	699,185.73

Horton Motor Lines, Inc. changed their fiscal year from August 31 to March 31, and consequently included 19 months in this period.

Not available for years prior to 1937.

Southeastern Motor Lines, Inc. commenced operating March 1, 1938.

NOTE: Depreciation has been reduced by the profit on sales or trades of equipment.

## ASSOCIATED TRANSPORT, INC.

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Schedule of Employees of the Companies Included in I. C. C. Application as of April 30, 1941

	Consolidated Motor Lines, Inc.	McCarthy Freight System, Inc.	M. Moran Transportation Lines, Inc.	Horton Motor Lines, Inc.	Barwell Bros. Inc.	Transportation Inc.	Southeastern Motor Lines Inc.	Arrow Carriers Corp.	Total
Equipment, Maintenance, and Garage Wages.....	101	49	58	79	48	44	8	29	416
Transportation Wages.....	245	315	303	303	232	167	54	87	1,798
Terminal Salaries and Wages.....	970	266	388	541	178	273	61	325	2,941
Sales, Tariff, and Advertising Salaries.....	34	16	14	19	57	15	3	7	2185
Insurance and Safety Salaries.....	15	4	3	18	3	3		2	48
Administrative Salaries.....	99	42	52	87	47	28	16	37	408
Other Salaries and Wages.....				20					20
	1,464	677	796	1,109	545	530	142	487	5,816

McLEAN TRUCKING CO., INC., ET AL.

# CONSOLIDATED MOTOR LINES, INC. (CONN.) AND SUBSIDIARIES

## Consolidating Balance Sheet as of May 17, 1941 (Capital and Surplus Adjusted to April 30, 1941)

### ASSETS

	Consolidated	Eliminations	Consolidated Motor Lines, Inc. (Conn.)	Consolidated Motor Lines of Mass., Inc.	United Sales & Mfg. Corporation	United Automobile Express, Inc. <sup>1</sup>
<b>CURRENT ASSETS</b>						
1040 Cash	\$215,229.13		\$208,561.44		\$7,667.69	
1020 Working Funds	17,985.03		11,990.00		59.03	
1060 Special Deposits	17,985.03		990.00			
1080 Temporary Cash Investments—Unpledged	10,034.35		10,034.35			
1080 Notes Receivable	420.00		420.00			
1100 Accounts Receivable—Associated Companies		\$11,493.24	328.94		11,164.30	
1120 Accounts Receivable—Officers, Stockholders, and Employees	2,068.46		1,968.04		100.42	
1120 Accounts Receivable—Trade and Others	296,127.74		296,127.74		470.44	
2820 Less Reserve for Uncollectible Accounts	8,268.10		8,268.00			
1120 Accounts Receivable—Trade and Others, Net	287,859.64		287,859.74			
1160 Interest Receivable	31,493.70		1,406.70			
1180 Material and Supplies	121,789.94		76,846.85		44,943.09	
Total Current Assets	632,753.37	11,493.24	590,969.06		64,277.55	
<b>TANGIBLE PROPERTY</b>						
1220 Revenue Equipment	1,316,970.05		841,783.03	\$475,187.02		
2220 Less Reserve for Depreciation and Amortization	669,680.53		467,466.41	262,223.92		
Revenue Equipment Net	647,289.52		374,316.62	212,963.10		
1230 Service Trucks and Autos	13,825.32		12,573.92	1,251.40		
2230 Less Reserve for Depreciation and Amortization	9,036.52		8,460.31	636.21		
Service Trucks and Autos Net	4,788.80		4,113.61	615.19		
1240 Furniture and Equipment	130,048.82		126,478.53		3,570.29	
2240 Less Reserve for Depreciation and Amortization						

<sup>1</sup> Discontinued its operation March 1, 1941.

NOTE.—Contingent Receivable based on claim for refund of \$3,556.97 for income taxes paid in prior years.

**CONSOLIDATED MOTOR LINES, INC. (CONN.) AND SUBSIDIARIES—Continued**  
**Consolidating Balance Sheet as of May 17, 1941 (Capital and Surplus Adjusted to April 30, 1941)—Continued**  
**ASSETS—continued**

	Consolidated	Eliminations	Consolidated Motor Lines, Inc. (Conn.)	Consolidated Motor Lines of Mass., Inc.	United Sales & Mfg. Corporation	United Automobile Excess, Inc.
2561 Less Reserve for Depreciation and Amortization.....	\$47,706.85		\$41,821.49		\$2,885.36	
1271- Furniture and Equipment Net.....	82,341.97		81,657.04		684.93	
2571 Leasehold Improvements—Net.....	27,973.17		27,973.17			
Total Tangible Property.....	762,393.66		546,130.44	\$213,378.29	684.93	
INVESTMENTS AND ADVANCES						
1600 Affiliated Companies.....		\$1,560,185.36	874,133.56	483,255.77		\$211,706.03
1600 Other Investments and Advances.....	98,830.64		98,830.64			
Total Investments and Advances.....	98,830.64	1,560,185.36	972,964.20	483,255.77		211,706.03
PREPAYMENTS AND OTHER DEFERRED DEBITS						
1800 Prepaid Taxes.....	103,429.92		102,429.92			
1800 Prepaid Insurance.....	33,023.65		33,023.65			
1800 Prepaid Licenses and Taxes.....	29,032.09		29,032.09			
1800 Other Prepaid Expenses.....	5,998.26		5,998.35		28.45	
1800 Miscellaneous Deferred Debits.....	1,167.48		1,167.48			
Total Prepayments and Deferred Debits.....	172,651.34		172,642.49		28.45	
Total assets.....	1,696,649.01	1,560,679.60	2,293,706.19	694,834.03	64,901.33	211,706.03

**LIABILITIES AND CAPITAL**

CURRENT LIABILITIES					
2000 Accounts Payable—Associated Companies.....		\$11,463.24			\$228.04
2000 Accounts Payable—Others and Stockholders.....	\$156.07				
2000 Accounts Payable—Trade and Other.....	237,593.62				33,187.79

2070 Wages Payable	49,918.93			49,895.10		36.73	
2080 C. O. D.'s Unremitted	40,604.99			40,604.99			
2120 Taxes Accrued	163,137.61			153,293.48	92,311.11	6,998.70	\$330.23
2150 Interest Accrued	832.07			832.07			
2190 Other Accrued Liabilities	5,065.80			5,065.80			
Total Current Liabilities	457,391.69	11,463.24		435,462.35	2,311.11	40,542.34	530.23
EQUIPMENT AND OTHER LONG-TERM OBLIGATIONS							
2300 Equipment Obligations—Due within one year	87,915.13			87,915.13			
2340 Equipment Obligations—Due after one year	243,000.54			243,000.54			
2360 Other Long-Term Obligations—Due within one year	4,431.57			4,431.57			
2390 Other Long-Term Obligations—Due after one year	54,291.08			54,291.08			
Total Equipment and Other Long-Term Obligations	390,238.32			390,238.32			
Advances from Affiliated Companies		1,544,955.36		695,051.80	690,020.75		159,912.81
RESERVES							
2680 Injuries, Loss and Damage Reserves	39,202.98			39,202.98			
2685 Reserve for State and Federal Income Taxes	8,832.07			8,832.07			
2690 Reserve for Contingent Liabilities	1,000.00			1,000.00			
Total Reserves	49,035.05			49,035.05		900.13	
Deferred Income (5/1 to 5/17/41)	47,706.99			46,112.50	694.36		
Total Liabilities and Reserves	944,362.05	1,555,478.60		1,604,920.02	692,936.22	41,532.37	160,452.04
CAPITAL STOCK							
2710 Common Capital Stock	10,905.00			10,905.00			
2720 Premiums and Assessments on Capital Stock	411,833.50	(A)24,890.30		415,673.50	(A)2,300.00	(A)16,000.00	(A)16,500.00
Total Capital Stock	422,828.50	29,000.00		426,968.50	2,300.00	6,000.00	16,500.00
UNAPPROPRIATED SURPLUS							
2830 Earned Surplus	319,458.46	(4,800.00)		300,817.67	1,697.84	17,458.96	34,793.99
Total Capital and Surplus	742,286.96	24,200.00		687,786.17	3,897.84	23,458.96	51,343.99
Total Liabilities and Capital	1,686,649.01	1,580,678.60		2,293,706.19	696,834.06	64,991.33	211,796.03

United Labour Express, Inc. discontinued its operation March 1, 1941.

Notes.—1. Deferred Income represents the profit from operations for the period from May 1, 1941 to May 17, 1941. 2. The liability for federal income and excess profits taxes has been compared to April 30, 1941. 3. The Reserve for Contingent Liabilities in the amount of \$1,000 is arbitrary, and is to provide for all contingencies pursuant to contract, including those indicated in the contract and attached schedule.

**1720 CONSOLIDATED MOTOR LINES, INC. (CONN.) AND SUBSIDIARIES**  
**Consolidated Statement of Income, Profit, and Loss, as Adjusted**  
**for the Fiscal Year Ended April 30, 1941**

	Consolidated	Consolidated Motor Lines, Inc. (Conn.)	Consoli- dated Motor Lines of Mass. Inc.	United Sales & Mfg. Cor- poration	United Arbour Express, Inc. <sup>1</sup>
3000 Operating Revenues	\$5,062,725.36	\$5,036,090.38			\$26,634.98
Expenses:					
4100 Equipment Maintenance and Garage Expense	488,739.62	485,614.07			3,125.62
4200 Transportation Expense	857,941.17	842,452.44			15,488.73
4300 Terminal Expense	1,945,022.93	1,944,205.67			817.26
4400 Sales, Tariff, and Adver- tising Expense	129,299.72	129,299.72			
4500 Insurance and Safety Ex- pense	252,410.64	251,786.80			623.84
4600 Administrative and General Expense	345,582.48	345,399.64			182.84
5000 Depreciation Expenses	178,559.30	106,742.49	\$70,885.80		931.01
5200 Operating Taxes and Licenses	318,580.11	303,425.43	13,668.98		1,485.70
5300 Operating Rents, Net	121,734.28	209,374.91	(88,300.00)		659.37
Total Expenses	4,637,870.32	4,618,301.17	(3,745.22)		23,314.37
Net Operating Revenue	424,855.04	417,789.21	3,745.22		3,320.61
Other Income:					
6000 Net Income from Non- carrier Operations	21,879.37			\$21,879.37	
6200 Interest Income	1,962.93	1,962.93			
6500 Other Nonoperating In- come	432.28	432.28			
Total Other Income	24,274.58	2,395.21		21,879.37	
Gross Income	449,129.62	420,184.42	3,745.22	21,879.37	3,320.61
Income Deductions:					
7000 Interest on Long Term Obligations	12,439.60	12,439.60			
7100 Other Interest Deduc- tions	745.38	745.38			
7500 Other Deductions	69.53	69.53			
Total Income Deduc- tions	13,254.51	13,254.51			
Net Profit before Fed- eral Income Taxes	435,875.11	406,929.91	3,745.22	21,879.37	3,320.61
Adjustment of Profit from period to calendar month basis as of April 30, 1941	(34,038.60)	(33,252.76)	(602.67)	(316.27)	113.10
Adjusted Net Profit before Federal In- come Taxes	401,836.51	373,677.15	3,142.55	21,563.10	3,433.71
8000 Provision for Federal Income Taxes	97,249.06	92,762.68	466.67	3,509.80	569.91
8020 Provision for Federal Excess Profits Taxes	65,757.96	62,634.72		3,123.24	
Net Profit after Income Taxes	238,829.49	218,279.75	2,675.88	14,930.06	2,923.80
Elimination of Nonrecurring expenses included above	57,347.16	57,347.16			
Less Federal and State In- come and Excess Profits Taxes applicable thereto	32,343.80	32,343.80			
Net Nonrecurring Ex- penses Eliminated	25,003.36	25,003.36			
Adjusted Net Profit ex- cluding Nonrecurring Expenses	263,812.85	243,283.11	2,675.88	14,936.06	2,923.80

<sup>1</sup> Discontinued its operations Mar. 1, 1941.

<sup>2</sup> NOTE.—Represents the net income of United Sales & Mfg. Corporation computed as follows:

Total sales (95 percent to Consolidated Motors Lines, Inc. (Conn.) \$174,251.99

Cost of sales and expenses 152,372.62

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## ASSOCIATED TRANSPORT, INC.

## Schedule Showing the Amount of Current Liabilities of the Companies Included in I. C. C. Application Attributable to Their Fixed Investments at April 30, 1941

Investments in Tangible Property at Adjusted Book Values:	
Revenue Equipment	\$3,751,074.52
Service Trucks	48,304.90
Land	325,732.61
Buildings	922,654.88
Furniture, Fixtures, and Equipment	410,021.31
Leasehold Improvements	58,610.62
Tires, Parts, and Supplies	667,172.36
Prepaid Tires on Vehicles, etc.	487,552.57
Total Investments in Tangible Property	6,671,123.72
Prepayments and Other Fixed Assets:	
License plates, etc. (estimated for year)	126,452.37
Insurance	226,742.94
Terminal Working Funds and Deposits	80,019.47
Other Prepaid Items	46,843.72
Total Prepayments	480,058.50
Total Fixed Investments	7,151,182.22
Deduct: Amounts owing, payable after one year	710,148.16
Net Fixed Investments	6,441,034.06
Capital and Surplus at April 30, 1941	4,900,243.24
Add: Deferred Income	62,353.51
	4,962,596.75
Amount of Current Liabilities Attributable to Fixed Investments at April 30, 1941	1,478,437.31

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## ASSOCIATED TRANSPORT, INC.

## Schedule Showing the Cash Requirements of the Companies Included in I. C. C. Application as of April 30, 1941

Cash Required for:	
Notes Payable	\$290,219.17
Accounts Payable	1,546,633.24
Wages Payable	209,737.81
C. O. D.'s Unremitted	28,504.37
Taxes, Interest and Other Accruals	860,861.55
Equipment and Other Obligations Maturing Within One Year	554,593.94
Reserve for Self-Insurance Claims, etc.	88,971.30
Total Cash Requirements for Liabilities	3,579,610.78
Cash or its equivalent immediately available for the payment of the above:	
Cash in Banks	510,411.45
Investments	10,064.25
Accounts Receivable	1,404,523.62
Other Investments and Advances	176,204.35
Total Available Cash or its Equivalent	2,101,173.47
Excess of Current Liabilities Over Available Cash or its Equivalent	1,478,437.31

## Exhibit 13,

## ASSOCIATED TRANSPORT, INC.

## Comparison of the Net Worths of the Companies Included in I. C. C. Application, Showing Net Worth Per Books and as Adjusted as at April 30, 1941, With Explanations for the Differences

	Consolidated Motor Lines, Inc.		McCarthy Freight System, Inc.		M. Moran Transportation Lines, Inc.		Horton Motor Lines, Inc.		Barnwell Bros., Inc.		Transportation Inc.	
Net Worth, per books April 30, 1941		\$783,531.29		\$411,928.99		\$339,645.80		\$1,514,769.08		\$325,618.87		\$8,840.37
Adjustments to profit and loss	(\$67,816.45)		(\$44,969.43)		(\$12,616.12)		\$34,707.73		(\$46,481.82)		(\$9,261.47)	
Adjustments to surplus	62,571.13		35,082.27		4,422.23		(3,260.25)		12,299.24		(47,782.92)	
Treasury Stock or stock not acquired	(36,000.00)			10,092.94		(8,193.80)		(9,427.00)		34,182.58		(57,043.39)
Net worth as adjusted, April 30, 1941		742,286.96		422,021.83		331,451.91		1,505,342.06		491,436.29		(48,203.12)
EXPLANATION OF DIFFERENCES												
Revision of Depreciation per Part 3E of Contract:	Additions to P. & L.	Additions to surplus	Additions to P. & L.	Additions to surplus	Additions to P. & L.	Additions to surplus	Additions to P. & L.	Additions to surplus	Additions to P. & L.	Additions to surplus	Additions to P. & L.	Additions to surplus
1. Structures			190.19	217.90								
2. Revenue equipment	327.74	1,640.66	(3,034.91)	8,651.13	602.23	(17,440.20)	4,643.73	36,341.37	(231.21)	606.11		
3. Service Equipment	350.67	631.94	(91.32)	(110.58)	41.25	158.59	410.53	158.53	19,785.67	25,016.41	10,150.79	12,467.55
4. Shop and garage equipment	21.48	89.18	791.28	2,270.87	168.48	1,132.33	(199.04)	21.05	(325.90)	133.14	116.60	61.14
5. Furniture and fixtures	36.57	1,921.34	1,003.92	2,410.35	1,266.73	7,261.33	(285.20)	2,065.54	1,033.17	552.11	887.41	
6. Miscellaneous equipment	(20.04)	1,753.33	1,727.00	985.18	282.26	1,062.55			(646.01)	(247.98)	451.06	926.70
7. Leasehold improvements	965.14	3,142.18	(322.61)	898.42	3,669.60	(6,164.22)			(61.65)	2.91	435.59	703.10
8. Depreciation adjustment account	(4,758.71)	4,758.71	(5,654.93)	5,654.93	(9,512.62)	9,512.62	(4,253.42)	4,253.42	916.54	(1,432.48)	(12,219.89)	12,219.89
Total "3E" Adjustments	(3,077.15)	13,937.34	(5,611.38)	20,978.29	(3,482.07)	(4,477.00)	316.60	42,839.91	19,699.56	24,992.72	6513.74	27,265.79
Other Adjustments:												
9. Prepaid Tires	(5,789.38)	(2,367.76)	4,623.62	43,423.17	(4,412.98)	5,710.27	16,822.07	68,957.22	(22,208.19)	22,248.89	6,274.60	15,654.11
10. Reserve for Uncollectible Revenues	11,422.12	23,225.04	(2,059.71)	(2,756.52)	3,031.75	358.78	5,621.91	2,635.44	2,730.43	(6,858.37)	(5,173.82)	(5,395.02)
11. Capitalized Maintenance			8,849.53	7,836.34	(1,323.83)	(3,565.10)	(29,569.60)	(9,089.32)			(1,597.61)	(111.88)
12. Reserves on above			(2,218.10)	(1,134.09)				6,329.35				
13. Tires in Equipment Costs, Net			1,890.43	1,195.05	(74.70)	3,649.27	560.39	(18,173.06)	(144.56)	(15,930.00)		
14. Accounts Receivable, Revenue and Misc			1,156.40	6,242.63	(4,508.07)		246.26	10,769.41	(1,954.03)	8,329.16	(6,439.36)	410.33
15. Vouchers Unrecorded, April 30, 1941	(14,223.51)		(8,493.90)	(90.36)	(6,361.09)		936.96	(4,520.28)	(1,968.83)	(468.35)		
16. P. D. Claims Receivable	(1,002.90)						(1,000.00)	1,000.00				
17. Insurance Dividends Receivable	(10,170.97)	6,165.39	(3,147.57)	3,147.57	(3,788.69)	3,788.69	7,480.00		(11,247.56)	11,247.56		
18. Inventories	652.92	4,564.30	(4.79)	11,720.58	4,585.45	7,696.95	(3,309.97)	19,606.87	(15,592.98)	10,006.86	(2,568.39)	(1,594.20)
19. Intangibles		(2,611.62)				(1,000.00)		(5,009.11)		(11,969.87)	5,702.31	(70,407.97)
20. Deferred Expense w/o	(2,825.88)	(437.81)			(833.24)	(354.36)	(1,118.59)	(6,855.27)	141.69	(500.00)	(1,167.53)	(1,687.97)
21. Sundry receivables or deposits w/o		(885.38)			(2,358.00)	(3,737.02)	274.12	(180.50)	(1,331.39)	(8,133.48)	6158.26	(2,360.43)
22. Insurance reserves or accruals	14,416.15	39,031.19	(1,295.79)	(3,955.51)	(2,522.70)	751.41	(2,494.68)	1,881.83	(990.42)	(1,343.57)	(4,308.37)	(4,076.72)
23. Pay-roll Taxes	1,232.61	(241.70)	280.24	93.86	1,174.78	(1,848.84)	447.91	183.08		33.98		
24. Capital Stock Tax	1,964.46	1,431.29	(309.70)	(121.70)	(1,173.70)	195.62	8,420.32	(5,588.67)		287.74	(1,984.30)	(308.06)
25. Accrued Interest					(671.02)	(719.26)				576.97		
26. Local Taxes	1,965.08	(2,183.67)	(707.24)	241.48	(219.88)	63.68	(2,770.93)	3.16	(3,348.15)	3,415.38	(28.16)	
27. State and Federal Income Taxes	(37,059.67)	5,207.33	(35,062.04)	(7,692.54)	4,092.73	(2,177.72)	57,745.68	(96,745.84)	(29,888.81)	(1,916.64)		
28. Other Balance Sheet Items	(1,848.39)	962.29	(5,566.82)	(1,455.29)	497.41	2,025.77	1,845.28	1,914.24	604.65	(1,206.20)	(410.40)	
29. Conversion to 4/30/41 fiscal year	(34,864.17)	(13,022.82)	(13,099.35)	(5,882.51)	2,910.18	1,425.16		(1,000.00)		(1,000.00)		
30. Reserve for Contingencies		(1,000.00)		(1,000.00)		(1,000.00)						
31. Contra - Vouchers Unrecorded 4/30/40	10,269.44	(10,269.44)	4,719.35	(4,719.35)	886.86	(886.86)			18,385.62	(18,385.62)	369.92	(309.92)
32. Contra - Officers' Life Insurance	1,423.24	(1,423.24)	(305.93)	305.93	1,447.14	(1,447.14)	14,693.23	(14,693.23)			3,800.08	(1,800.08)
33. Contra - Other Items	(500.41)	500.41	12,326.08	(12,326.08)			(474.12)	474.12				
Totals	(67,816.46)	62,571.13	(44,969.43)	55,082.27	(12,616.12)	4,422.23	54,673.73	(5,260.75)	(46,481.82)	12,299.24	(9,261.47)	(17,782.02)

	Southeastern Motor Lines, Inc.		Arrow Carrier Corporation		Southern New England Terminals, Inc.		Brown Equipment & Mfg. Co., Inc.		Conger-Realty Company		Barnwell Warehouse & Brokerage Co.	
Net worth, per books, Apr. 30, 1941		\$106,975.58		\$910,666.06		\$31,855.40		\$256,834.84		\$131,265.55		\$56,059.04
Adjustments to profit and loss	(\$1,679.67)		(\$8,183.26)		(\$1,331.86)		(\$934.31)		(\$27,878.78)		\$8.44	
Adjustments to surplus	(5,484.59)		42,705.12		(1,088.56)		6,244.87		27,931.54		(458.70)	
Treasury stock or stock not acquired		(7,164.26)		(27,300.00)		(2,420.42)		5,310.56		52.76		(450.26)
Net worth as adjusted, Apr. 30, 1941		99,811.32		917,887.92		29,434.98		262,145.40		131,318.31		55,608.38
EXPLANATION OF DIFFERENCES												
Revision of depreciation per part 3E of contract:	Additions to P. & L.	Additions to surplus	Additions to P. & L.	Additions to surplus	Additions to P. & L.	Additions to surplus	Additions to P. & L.	Additions to surplus	Additions to P. & L.	Additions to surplus	Additions to P. & L.	Additions to surplus
1. Structures			83.36	(3,283.02)								
2. Revenue equipment	1,790.48	(400.58)	(1,098.36)	83,185.79	1,050.99	2,467.57			1,802.61	(1,163.43)	29.49	1,061.68
3. Service equipment	(46.13)	(58.86)	329.81	(217.02)								
4. Shop and garage equipment	74.21	85.75	(83.70)	139.12				1,123.00			11.18	69.79
5. Furniture and fixtures	91.38	118.25	(653.86)	(47.99)							1.01	9.33
6. Miscellaneous equipment	24.06	20.52										
7. Leasehold improvements	368.15	464.67	400.80	(1,460.80)								
8. Depreciation adjustment account	213.00	(213.00)	557.53	(557.53)								
Total "3E" adjustments	2,515.17	16.75	(1,064.45)	77,749.50	1,050.99	2,467.57		1,123.00	1,802.51	(1,163.43)	41.38	1,177.84
Other adjustments:												
9. Prepaid tires	3,953.52	7,808.19	(3,897.85)	29,629.12				4.97			(434.87)	1,031.67

## Other Adjustments:

9. Prepaid Taxes	(5,789.38)	(2,387.76)	4,823.62	43,423.17	(4,412.08)	5,710.27	16,822.07	68,957.22	(22,208.19)	22,248.89	6,274.00	15,654.11
10. Reserve for Uncollectible Revenues	11,422.12	25,225.04	(2,059.71)	(2,756.52)	3,031.75	358.78	5,621.91	2,635.41	2,730.43	(6,868.37)	(5,173.82)	(5,305.02)
11. Capitalized Maintenance			8,849.53	7,836.34	(1,823.63)	(3,565.10)	(29,569.60)	(9,969.32)			(1,597.61)	(111.88)
12. Reserves on above			(2,218.10)	(1,194.00)				6,329.35				
13. Tires in Equipment Costs, Net			1,896.43	1,195.05	(74.70)	3,649.27	560.59	(18,173.06)	(144.56)	(15,930.00)		
14. Accounts Receivable, Revenue and Misc			1,156.40	6,242.63	(4,508.07)	1,769.41	246.26	(1,954.03)	(1,954.03)	8,329.16	(6,430.36)	410.33
15. Vouchers Unrecorded, April 30, 1941	(14,233.51)		(8,493.90)		(6,361.09)		936.96	(4,520.28)	(1,988.83)	(408.33)	(1,038.44)	
16. P. D. Claims Receivable	(1,002.90)		(99.30)	909.56	486.65		(1,000.00)	1,000.00				
17. Insurance Dividends Receivable	(10,170.97)	6,165.39	(3,147.57)	3,147.57	(3,788.69)	3,788.69	7,480.00		(11,247.56)	11,247.56		
18. Inventories	652.92	4,364.30	(4.79)	11,720.58	4,585.45	7,666.95	(3,309.97)	19,606.87	(15,592.98)	10,006.86	(2,568.39)	(1,594.20)
19. Intangibles		(2,611.62)				(1,000.00)		(5,019.11)		(11,909.87)	5,702.31	(70,407.97)
20. Deferred Expense w/o	(2,825.88)	(437.81)			(833.24)	(354.36)	(1,118.59)	141.69		(500.00)		
21. Sundry receivables or deposits w/o		(885.28)			(2,358.00)	(3,737.02)	274.12	(180.60)	(1,331.39)	(8,133.48)	(1,167.53)	(1,687.97)
22. Insurance reserves or accruals	14,416.15	30,031.19	(1,295.79)	(3,955.51)	(2,522.70)	751.41	(2,494.69)	1,881.83	(690.42)	(1,343.57)	(4,308.37)	(2,360.43)
23. Pay-roll Taxes	1,282.61	(241.70)	280.24	95.86	1,174.78	(1,848.84)	447.91	183.08		33.98		(4,078.72)
24. Capital Stock Tax	1,964.46	1,433.29	(309.70)	(121.70)	(1,173.70)	195.62	8,420.32	(5,588.67)	(259.80)	287.74		
25. Accrued Interest					(671.02)	(719.36)		576.97		(576.97)	(1,984.30)	(308.06)
26. Local Taxes	1,965.03	(2,183.67)	(707.24)	241.48	(219.88)	63.68	(2,770.03)	3.16	(3,348.15)	3,415.38	(28.16)	
27. State and Federal Income Taxes	(37,059.67)	5,207.33	(35,902.04)	(7,662.54)	4,092.73	(2,177.72)	37,745.68	(96,745.84)	(29,888.81)	(1,916.64)		
28. Other Balance Sheet Items	(1,848.39)	982.29	(5,586.82)	(1,455.29)	497.41	2,025.77	1,845.28	1,914.24	604.65	(1,206.20)	(416.40)	
29. Conversion to 4/30/41 fiscal year	(34,684.17)	(13,022.82)	(13,099.35)	(5,892.51)	2,910.18	1,425.16		(1,000.00)		(1,000.00)		(1,000.00)
30. Reserve for contingencies		(1,000.00)		(1,000.00)		(1,000.00)						
31. Contra-Vouchers Unrecorded 4/30/40	10,269.44	(10,269.44)	4,719.35	(4,719.35)	886.86	(886.86)			18,385.62	(18,385.62)	369.92	(369.92)
32. Contra-officers' Life Insurance	1,423.24	(4,423.24)	(305.93)	305.93	1,447.14	(1,447.14)	14,693.23	(14,693.23)			3,800.08	(3,800.08)
33. Contra-other items	(500.41)	500.41	12,326.68	(12,326.68)			(474.12)	474.12				
Totals	(67,816.46)	62,571.13	(44,989.43)	55,082.27	(12,616.12)	4,422.23	54,673.73	(5,260.75)	(46,481.82)	12,299.24	(9,261.47)	(47,782.02)

1724	Southeastern Motor Lines, Inc.		Arrow Carrier Corporation		Southern New England Terminals, Inc.		Brown Equipment & Mfg. Co., Inc.		Conger Realty Company		Barnwell Warehouse & Brokerage Co.	
Net worth, per books, Apr. 30, 1941		\$106,975.58		\$910,666.06		\$31,855.40		\$256,834.84		\$131,265.55		\$86,059.64
Adjustments to profit and loss	(\$1,679.67)		(\$8,183.26)		(\$1,331.86)		(\$934.31)		(\$27,878.78)		\$8.44	
Adjustments to surplus	(5,484.59)		42,705.12		(1,088.56)		6,244.87		27,931.54		(458.70)	
Treasury stock or stock not acquired		(5,164.26)		7,221.86		(2,420.42)		5,310.56		52.76		(450.26)
Net worth as adjusted, Apr. 30, 1941		99,811.32		917,887.92		29,434.98		262,145.40		131,318.31		55,608.38
EXPLANATION OF DIFFERENCES												
Revision of depreciation per part 3E of contract:	Additions to P. & L.	Additions to surplus	Additions to P. & L.	Additions to surplus	Additions to P. & L.	Additions to surplus	Additions to P. & L.	Additions to surplus	Additions to P. & L.	Additions to surplus	Additions to P. & L.	Additions to surplus
1. Structures			83.36	(3,283.62)	1,050.99	2,467.57			1,802.51	(1,163.43)		17.04
2. Revenue equipment	1,790.46	(400.58)	(1,098.35)	88,185.79							29.49	1,081.08
3. Service equipment	(46.13)	(58.86)	329.81	(217.02)								
4. Shop and garage equipment	74.21	85.75	(83.70)	139.12				1,123.00			12.18	69.79
5. Furniture and fixtures	91.38	118.25	(653.86)	(47.99)							1.01	9.33
6. Miscellaneous equipment	24.08	20.52										
7. Leasehold improvements	368.15	464.67	400.80	(1,469.85)								
8. Depreciation adjustment account	213.00	(213.00)	557.53	(557.53)								
Total "3E" adjustments	2,515.17	16.75	(1,064.45)	77,749.50	1,050.99	2,467.57		1,123.00	1,802.51	(1,163.43)	41.68	1,177.84
Other adjustments:												
9. Prepaid taxes	3,953.52	7,808.19	(3,897.85)	29,629.12				4.97			(434.87)	1,034.67
10. Reserve for uncollectible revenues	(1,202.17)	340.31	(436.79)	(2,740.39)			(383.27)	(175.71)				
11. Capitalized maintenance	1,001.36	2,847.87	13,153.83									
12. Reserves on above	(743.78)	(469.65)	(6,881.87)									
13. Tires in equipment costs, net												(1,300.00)
14. Accounts receivable, revenue and miscellaneous												
15. Vouchers unrecorded 4/30/41	(552.46)		(4,100.12)	(12,000.00)			(132.60)					
16. P. D. claims receivable												
17. Insurance dividends receivable			(3,771.00)	3,771.00								
18. Inventories			6,118.02	16,715.51			1,310.04	12,958.75				
19. Intangibles		(10,528.17)	1,800.00	(32,547.35)		(310.82)		(187.13)				
20. Deferred expense w/o			(923.70)				(1,415.80)	340.42				
21. Sundry receivables or deposits w/o				(142.00)								
22. Insurance reserves or accruals	(297.18)	(292.48)	2,273.79	(1,778.80)			(27.95)	59.14				
23. Pay roll taxes			(261.00)				51.87	(89.96)				
24. Capital stock tax			351.64	644.17			500.96	(62.52)			159.77	7.99
25. Accrued interest			(46.18)	(830.20)								
26. Local taxes	(51.93)	159.57	3,326.56	(3,738.11)	6.45	(531.01)		(1,700.62)	2,333.84	(3,572.42)	110.20	(112.29)
27. State and Federal income taxes	(6,621.23)	(4,091.21)	(16,257.50)	(27,385.93)	(800.90)	(718.84)		(5,935.52)	(32,609.78)	34,127.04	(8.27)	(511.05)
28. Other balance sheet items	(.50)	43.76	(2,048.69)	640.65	(1,474.93)	29.68	113.52	(181.15)	688.53	(554.53)		387.07
29. Conversion to 4/30/41 fiscal year												
30. Reserve for contingencies		(1,000.00)		(1,000.00)		(1,000.00)		(1,000.00)		(1,000.00)		(1,000.00)
31. Contra-vouchers unrecorded 4/30/40	828.25	(828.25)	3,399.30	(3,399.30)			160.83	(100.83)				
32. Contra-officers' life insurance	213.75	(213.75)										
33. Contra-other items	(722.47)	722.47	882.75	(882.75)	501.90	(501.90)	(1,153.03)	1,153.03	(90.88)	90.88	139.93	(139.93)
Total	(1,679.67)	(5,484.59)	(8,183.26)	42,705.12	(1,331.86)	(1,088.56)	(934.31)	6,244.87	(27,878.78)	27,931.54	8.44	(458.70)

For the purpose of stock distribution, an additional increase of \$79,911.48 is required, being an adjustment made by the company before audit, for the revision of depreciation at contract rates, which was reduced \$16,837.97 by a audit.

1725

## Exhibit No. 14

Witness: O'Day.

**CONSOLIDATED MOTOR LINES, INCORPORATED, 1179 MAIN ST., HARTFORD, CONNECTICUT**

Before the Interstate Commerce Commission, in the Matter of Application of Associated Transport, Inc., for Acquisition of Control of Certain Motor Carriers and for the Consolidation Thereof

Statement showing various points in Massachusetts, Rhode Island, and Connecticut, on the one hand, and New York, N. Y., Jersey City, N. J., Newark, N. J., and Philadelphia, Pa., on the other hand, which Consolidated Motor Lines, Incorporated, has been authorized to serve, and a partial number of competitive Motor Truck Carriers serving the same points, as compiled from application dockets on file with the Interstate Commerce Commission at Washington, D. C.:

Routes <sup>1</sup>				
Point	Route 1 Series	Route 2 Series	Route 3 Series	Route 4 Series
Lawrence, Mass.				
Boston, Mass.				
Providence, R. I.	1A	2A	3A	4A
Westerly, R. I.	1B	2B	3B	4B
New London, Conn.	1C	2C	3C	4C
New Haven, Conn.	1D	2D	3D	4D
Bridgeport, Conn.	1E	2E	3E	4E
	1F	2F	3F	4F
	1G	2G	3G	4G
	1H	2H	3H	4H
	1I	2I	3I	4I
Norwalk, Conn.				
Stamford, Conn.				
New York, N. Y.				
Jersey City, N. J.				
Newark, N. J.				
Philadelphia, Pa.				
Number of carriers <sup>1</sup>	5	10	10	13
Serving route numbers	1A 1B 1C 1D 1E 1F 1G 1H 1I	2A 2B 2C 2D 2E 2F 2G 2H 2I	3A 3B 3C 3D 3E 3F 3G 3H 3I	4A 4B 4C 4D 4E 4F 4G 4H 4I

<sup>1</sup> Services of all carriers over these routes are between operation.

1725-a		Routes <sup>1</sup>			
Point		Route 5 Series	Route 6 Series	Route 7 Series	Route 8 Series
Fitchburg, Mass.					
Clinton, Mass.					
Worcester, Mass.					
Southbridge, Mass.					
Rockville, Conn.				7A	8A
Manchester, Conn.			6A	7B	8B
New York, N. Y.	5A	5B	6C	7C	8C
Jersey City, N. J.		5C	6D	7D	8D
Newark, N. J.		5D	6E	7E	8E
		5E	6F	7F	8F
Philadelphia, Pa.		5F			
Number of carriers <sup>2</sup>	4	4	6	6	9
Serving route numbers	5A	5B	6A	7A	8A
		5C	6B	7B	8B
		5D	6C	7C	8C
		5E	6D	7D	8D
		5F	6E	7E	8E
			6F	7F	8F

<sup>1</sup> Services of all carriers over these routes are a between operation.<sup>2</sup> For names of carriers see appendix A attached.

1726 Routes <sup>1</sup>				
Point	Route 9 Series	Route 10 Series	Route 11 Series	Route 12 Series
Greenfield, Mass.				
Holyoke, Mass.				
Springfield, Mass.				
Hartford, Conn.				
New Britain, Conn.	9A	10A	11A	12A
Meriden, Conn.	9B	10B	11B	12B
New York, N. Y.	9C	10C	11C	12C
Jersey City, N. J.	9D	10D	11D	12D
Newark, N. J.	9E	10E	11E	12E
Philadelphia, Pa.	9F	10F	11F	12F
Number of carriers <sup>2</sup>	3 3 9 8 4 4	6 13 27 37 14 21	6 15 25 34 12 20	9 16 31 46 16 25
Serving route numbers	9A 9B 9C 9D 9E 9F	10A 10B 10C 10D 10E 10F	11A 11B 11C 11D 11E 11F	12A 12B 12C 12D 12E 12F

<sup>1</sup> Services of all carriers over these routes are a between operation.<sup>2</sup> For names of carriers see appendix A attached.

1727		Routes <sup>1</sup>			
Point		Route 13 Series	Route 14 Series	Route 15 Series	Route 16 Series
North Adams, Mass.				15A	16A
Adams, Mass.				15B	16B
Pittsfield, Mass.				15C	16C
Winsted, Conn.				15D	16D
Torrington, Conn.				15E	16E
Waterbury, Conn.				15F	16F
New York, N. Y.		13A	14A		
Jersey City, N. J.		13B	14B		
Newark, N. J.		13C	14C		
Philadelphia, Pa.		13D	14D		
		13E	14E		
		13F	14F		
Number of carriers <sup>2</sup>		2	3	3	5
Serving route numbers		13A	14A	15A	16A
		13B	14B	15B	16B
		13C	14C	15C	16C
		13D	14D	15D	16D
		13E	14E	15E	16E
		13F	14F	15F	16F

<sup>1</sup> Services of all carriers over these routes are a between operation.

<sup>2</sup> For names of carriers see appendix A attached.

## APPENDIX A

1728

Application docket number	Name of carrier	Address	Route numbers
72418	A. B. & C. Motor Transportation, Inc.	Fitchburg, Mass.	8A, 12C, 8C, 4F, 4C, 4B, 12A.
30138	A. C. E. Transportation Company, Inc.	Akron, Ohio	2B, 3B, 4B, 10A, 11A, 12A, 6A, 7A, 8A, 14C, 15C, 16C, 10C, 11C, 12C, 6C, 7C, 8C, 3C, 3H, 4H, 2F, 3F, 4F, 14D, 13D, 16D, 14E, 15E, 16E, 2A, 3A, 4A, 20, 30, 40, 3C, 3G, 4C, 2D, 3D, 4D, 10D, 11D, 12D.
2542	Adley Express Co., Inc.	New Haven, Conn.	15B, 14B, 16B, 13B, 3B, 2B, 4B, 1B, 3G, 2G, 4G, 7G, 8B, 5B, 7A, 6A, 8A, 2A, 1A, 10A, 12A, 9A, 11D, 10D, 12D, 9D, 11B, 10B, 12B, 9B, 3A, 2A, 4A, 1A, 7E, 6E, 8F, 3F, 11F, 10F, 12F, 9F, 11E, 10E, 12E, 9E, 3E, 2F, 4F, 3E, 2E, 4E, 1E, 15A, 14A, 16A, 13A, 3H, 2H, 4H, 1H, 15C, 14C, 16C, 13C, 3C, 2C, 4C, 1C, 7E, 6E, 8E, 3E, 7D, 6D, 8D, 5D, 11C, 10C, 12C, 9C, 3I, 2I, 4I, 11E, 10E, 12E, 9E, 3E, 15F, 14F, 16F, 13F, 3D, 2D, 4D, 1D, 15D, 14D, 16D, 13D, 7C, 6C, 8C, 5C.
C-1778 P-67585 79369	B. & E. Transportation Co., Inc. Walter T. Bally, d/b/a Bally Transportation Co., Inc.	New York, N. Y. Bridgeport, Conn.	4B, 4G, 4H, 4I, 4E, 12D, 12C, 12E, 4C. 4G, 4F, 11D, 4I, 3F, 12D.
61471	Benjamin Motor Express, Inc.	Charlestown, Mass.	4B, 3B, 2B.
42349	Bill's New York-New Haven Motor Express	New Haven, Conn.	4F, 4G, 2F, 2G, 12E, 12D, 12F, 16F, 16E, 10E, 10D, 10F, 14F, 14E.
2472	Blake Motor Lines, Incorporated	Torrington, Conn.	12A, 16D, 16E, 16F.
55218	Boston, New York Transportation Company, Inc.	Chelsea, Mass.	4B, 4F, 4I, 12D, 2B, 2F, 2I, 10D, 4C, 4D, 4A, 12C, 2C, 2D, 10C.
9942 Sub. 1	Brown & Pollack Motor Lines, Inc.	Bridgeport, Conn.	4H, 4I, 4G, 4F, 12F, 2F, 2I, 2G, 2F, 10F.
1729 10307	Capital Motor Transportation Co., Inc.	Everett, Mass.	4A, 2B, 8C, 6C, 12C, 12D, 16D, 8D, 4D, 4F, 8A, 8B, 12A, 12F, 16E.
73462	Clinton Transportation Corp.	New York, N. Y.	4B, 4F, 12D, 12C, 8A, 4A, 8C, 4C.
59918	Clinton Trucking Co.	Clinton, Mass.	6B, 6C, 10C, 10D, 2F, 10F, 2G, 2H, 2I.
4859	Connecticut Motor Lines, Inc.	New Haven, Conn.	3B, 2B, 4B, 3G, 2G, 4G, 11D, 10D, 12D, 11F, 10F, 12F, 9F, 11E, 10E, 12E, 9E, 3F, 2F, 4F, 1F.
31919	Crowe & Co., Inc.	Waterbury, Conn.	3G, 2G, 4G, 11D, 10D, 12D, 11B, 10B, 12B, 7F, 6F, 8F, 11F, 10F, 12F, 11E, 10E, 12E, 9E, 3E, 2E, 4E, 1E, 15E, 14E, 16E, 15F, 14F, 16F.
59278	E. N. Curtis Transportation Inc.	Danielson, Conn.	3F, 2F, 4F, 1F, 3E, 2E, 4E, 11C, 10C, 12C, 15E, 14E, 16E, 15F, 14F, 16F.
9717	D. & N. Motor Transportation Co.	Lawrence, Mass.	16D, 4F, 4G, 4H, 4I, 12E, 12D.
87168	Eastern Motor Freight Lines, Inc.	Plainfield, N. J.	2A, 2B, 2C, 6C, 10C.
15997	Edgerton & Sons, Inc.	Bridgeport, Conn.	2G, 3G, 4G, 2F, 3F, 4F, 2C, 3C, 4C, 3B, 2B, 4B, 11D, 10D, 12D, 11B, 10B, 12B, 7C, 6C, 8C, 15C, 14C, 16C, 3E, 2E, 4E, 14F, 15F, 10F.
87250	Ellis Motor Line, Inc.	Stamford, Conn.	11B, 12C, 12D, 4F, 12F, 4G, 4I, 4H.
84442	Emmot-Valley Transportation Company, Inc.	Stafford Springs, Conn.	12D, 8F, 8E, 16A.
96802	Fagan Transportation, Inc.	Uxbridge, Mass.	4B, 12C, 2B, 10C, 4F, 8C, 2F, 6C, 12D, 4C, 10D, 2C.
8924	Falman Motor Lines, Inc.	New Britain, Conn.	11C, 12C, 11D, 12D, 11B, 12B, 3G, 4G, 11F, 12F, 11E, 12E, 3F, 4F, 3H, 4H, 3I, 4I, 15F, 16F.
1759	Frechlick Transportation Co., Inc.	Hartford, Conn.	12C, 11C, 10C, 9C, 11D, 10D, 12D, 9D, 7E, 6E, 8E, 5E, 7F, 16F, 6F, 8F, 5F, 11E, 10E, 12E, 9E, 4G, 4I, 4H.
		Stamford, Conn.	30D, 10F, 2G, 2H, 2I, 10E, 9F, 6E.

## APPENDIX A—Continued

Application docket number	Name of carrier	Address	Route numbers
1730	Gabelmann's Express	Winsted, Conn.	14B, 15B, 16B, 14E, 15E, 16E, 2H, 3H, 4H, 14F, 15F, 16F, 2G, 3G, 4G, 10F, 11F, 12F, 10D, 11D, 12D, 2F, 3F, 4F
73866	Louis J. Gardella, Inc.	Norwalk, Conn.	3G, 2G, 4G, 3F, 2F, 4F, 2H, 3H, 4H, 3I, 2I, 4I, 16F, 14F, 16F
74772	Goodman's New York & Conn. Express Corporation	New York, N. Y.	12B, 12E, 8F, 4H, 8E, 4F, 16D, 4E, 4I, 4G
28212	Harrison Motor Freight	Newark, N. J.	3A, 2A, 4A, 1A, 3B, 2B, 4B, 1B, 7C, 6C, 8C, 5C, 3C, 2C, 4C, 1C, 7A, 6A, 8A, 5A, 7B, 6B, 8B, 5B, 3B, 2B, 4B, 1B
18264	Benford Transportation Company, Inc.	Hartford, Conn.	12D, 11D, 4B, 12A, 10D, 16A, 12E, 12C, 12B, 12D, 4C
34141	Benjamin Hershfield, d/b/a Hershfield Motor Transportation Company	South Norwalk, Conn.	4H, 3H
73839	Transpotation Company, Inc.	Boston, Mass.	3B, 2B, 4B
72033	Holland Transportation Co., Inc.	New York, N. Y.	3B, 2B, 4B, 1B, 3G, 2G, 4G, 1G, 10D, 12D, 9D, 11B, 10B, 12B, 9B, 3F, 2F, 4F, 1F, 3H, 2H, 4H, 1H, 3C, 2C, 4C, 1C, 10C, 12C, 9C, 3I, 2I, 4I, 1I, 7C, 6C, 8C, 5C
47066	Kimball Motor Dispatch, Inc.	Great Barrington, Mass.	16B, 16V, 16B, 15C
71248	Kling Brothers Trucking Company, Inc.	Hamden, Conn.	2F, 3F, 4F, 2G, 3G, 4G, 2I, 3I, 4I, 2H, 3H, 4H, 10D, 11D, 12D, 10F, 11F, 12F
306	L. & L. Transportation Co.	Lowell, Mass.	7C, 6C, 8C, 3A, 2A, 4A, 7C, 16C, 12C, 3B, 2B, 4B
3377	Lakes Motor Lines, Inc.	Waterbury, Conn.	10D, 2E, 15E, 15D, 11D, 14E, 14D, 12D, 3E, 16D
7568	Laube-Interstate, Incorporated	Waterbury, Conn.	2B, 3B, 4B, 2C, 3C, 4C, 2D, 3D, 4D, 2E, 3E, 4E, 2F, 3F, 4F, 2I, 3I, 4I, 2H, 3H, 4H, 2G, 3G, 4G, 14F, 16F, 16C, 7C, 8C, 10C, 11C, 12C, 10D, 11D, 12D, 2A, 3A, 4A, 10E, 11E, 12E, 14E, 15E, 16E, 14C, 15C, 16C, 10B, 11B, 12B, 10A, 11A, 12A, 10B, 15B, 16B, 11A, 15A, 16A, 6F, 7F, 8F, 6E, 7E, 8E, 14D, 15D, 16D
42269	Lombard Bros., Incorporated	Waterbury, Conn.	3G, 2G, 4G, 11D, 10D, 12D, 11F, 10F, 12F, 3F, 2F, 4F, 3E, 2E, 4E, 3H, 2H, 4H, 11C, 10C, 9C, 3I, 2I, 4I, 15F, 14F, 16F
45099	Lowell Trucking Corporation	Lowell, Mass.	2C, 4C, 2B, 4B, 6C, 8C, 5A, 6A
66274	M. & R. Transportation Co., Inc.	Springfield, Mass.	4B, 4F, 4C, 15C, 8C, 12D, 4G, 4I, 4H, 3B, 3G, 11D, 3E, 4E, 3H, 3C, 16D, 7C, 3F, 11C, 11F, 12F
66275	M. & M. Transportation Company	Boston, Mass.	1B, 1F, 1G, 1A, 9C, 9D, 5C
2405	Moshauk Transportation Company	Saylesville, R. I.	3B, 2B, 4B, 1B, 3G, 2G, 4G, 1G, 9D, 10D, 11D, 12D, 1F, 2F, 3F, 4F, 1H, 2H, 3H, 4H, 1C, 2C, 3C, 4C, 9C, 10C, 11C, 12C, 1I, 2I, 3I, 4I
91640	Mar Moskowitz and George Simonowitz, d/b/a Moskowitz Transportation Company	Jewett City, Conn.	2E, 3E, 4E
Sub. I 9876	National Transportation Company, Inc.	Bridgeport, Conn.	3I, 2I, 4I, 3H, 2H, 4H, 3G, 2G, 4G, 3F, 2F, 4F, 11F, 10F, 12F, 11D, 10D, 12D, 11E, 10E, 12E, 11B, 10B, 12B, 11C, 10C, 12C
17470	New York-Massachusetts Motor Service Co.	Springfield, Mass.	3G, 2G, 4G, 11D, 10D, 12D, 11B, 10B, 12B, 11F, 10F, 12F, 3F, 2F, 4F, 3H, 2H, 4H, 7D, 6D, 8D, 11C, 10C, 12C, 3I, 2I, 4I
59720	New York & Worcester Dispatch, Inc.	Worcester, Mass.	4B, 3B, 2B, 11C, 10C, 12C, 11D, 10D, 12D, 3F, 2F, 4F
66332	Oates Bros., Inc.	Shelton, Conn.	20, 2H, 2I, 10D, 6F, 10F, 10E, 2F, 6E, 14E, 14F
30090	Old Colony Forwarding Corporation	New York, N. Y.	3I, 2I, 4I, 3B, 2B, 4B, 3A, 2A, 4A
87361	Palmer Lines, Inc.	Great Barrington, Mass.	15B, 14B, 16B, 15C, 14C, 16C



1466

## MCLEAN TRUCKING CO., INC., ET AL.

1735

## Exhibit 15.

## EXHIBIT C (Cont'd)

Balance Sheet, Arrow Carrier Corporation, Paterson, N. J.,  
April 30, 1941

## ASSETS

## Current assets:

## Cash:

On Deposit-----	\$82,452.60	
Petty Cash Funds-----	3,295.00	
Special Deposits-----	527.50	
		\$86,275.10

## Accounts Receivable:

Customers-----	89,189.74	
Connecting Lines-----	11,490.93	
Employees-----	1,716.51	
Terminals-----	21,718.59	
Miscellaneous-----	1,309.76	
		125,425.53

## Inventories:

Tires and Tubes-----	5,306.85	
Stationery-----	3,201.39	
Materials and Supplies-----	6,304.39	
		14,872.63

Total Current Assets----- \$206,573.35

## Carrier Operating Property:

	Cost	Reserve	
Land-----	\$85,343.97	0	
Structures-----	308,924.51	\$55,568.86	
Revenue Equipment-----	1,225,489.15	\$89,035.25	
Service Equipment-----	18,278.32	13,329.54	
Shop and Garage Equip-----	17,705.17	7,466.86	
Furn. and Office Equip-----	45,132.50	17,894.03	
Improve. to Leasehold-----	2,405.05	1,336.00	
	1,701,278.67	965,290.54	735,988.13

## Nonoperating Property:

Land and Structures-----	27,818.88	84.12	27,734.76
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## Intangible Property:

Franchises, Permits, etc-----		39,423.31	
Less: Res. for Amort-----		8,675.96	
			30,747.35

## Prepayments:

Unexpired Insurance-----	17,694.10	
Prepaid Auto Licenses-----	20,363.23	
Prepaid Taxes, Int. and Rent-----	4,237.55	
Prepaid Tire Expense-----	37,868.14	
Other Prepaid Expenses-----	5,632.44	
		85,795.46

1,086,839.05

1736

## LIABILITIES, CAPITAL, AND SURPLUS

## Current Liabilities:

## Notes Payable:

Citizens Trust Company	\$5,000.00
------------------------	------------

## Accounts Payable:

Trade Creditors	\$55,980.44
Connecting lines	7,692.59
Unremitted C. O. D.'s	12,879.92
Social Security Deductions	940.27
Miscellaneous	700.25

78,193.47

## Accrued Accounts:

Wages Payable	31,714.46
Accrued Taxes	40,061.53
Accrued Interest	300.00

72,135.99

## Total Current Liabilities

\$155,329.46

## Equipment Obligations:

Autocar Sales & Service Co.	\$13,097.71
Mack Trucks, Inc.	11,700.00

24,797.71

## Real Estate Mortgage Payable:

Paterson Building & Loan Assn.	12,000.00
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## Reserves:

Reserve for Accidents	1,244.99
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## Capital and Surplus:

## Capital Stock:

Pref'd—Par Value \$100  
per share:

Issued and Sub-	
scribed, 1,380	
shares	\$138,000.00

Common—Par Value \$50

per share:

Issued, 1,976½	
shares	98,825.00

236,825.00

## Surplus:

Earned	656,641.89
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893,466.89

1,086,839.05

The net worth shown by the above balance sheet shall be reduced in the sum of \$12,000 by reason of a payment to be made in that amount for cancellation of the liability of the above company under an employment agreement with John Hamilton.

1737

*Exhibit No. 16*

**Witness Lawson.**

**MOTOR COMMON CARRIERS SERVING, AUTHORIZED, OR CLAIMING AUTHORITY TO SERVE CERTAIN REPRESENTATIVE AND PRINCIPAL AREAS SERVED BY CERTAIN MOTOR COMMON CARRIERS COMPOSING A PART OF ASSOCIATED TRANSPORT, INC.**

1738

[illegible]

1739

CARRIER AND AREAS AUTHORIZED TO BE SERVED EXCEPT AS OTHERWISE NOTED

PRINCIPAL AND REPRESENTATIVE AREAS

NEW ENGLAND

NEW YORK

PHILADELPHIA

BALTIMORE

RICHMOND

GREENSBORO  
BURLINGTON

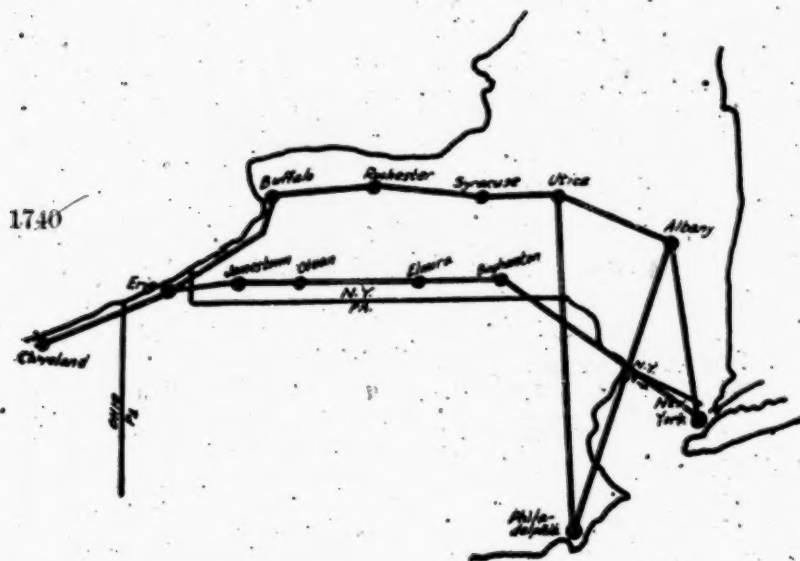
CHARLOTTE

GREENVILLE

ATLANTA

BEYOND

FOOTNOTE: SEE ATTACHED SHEETS FOR EXPLANATION OF CARRIER CODE AND OTHER LEGEND



1741 Carrier	Name of line	I. C. C. Docket No.
1	Akers Motor Lines, Inc.	MC 72442—Certificate.
2	Carolina Freight Carrier Corp.	MC 2253 and Sub. No. 1.
3	Howard Hall Company, Inc.	MC 42318 (I).
4	Jack Cole Company, Inc.	MC 73464 (I).
5	Roadway Express, Inc.	MC 2202 and Sub. No. 1.
6	Harris Brothers Transfer Company, Inc.	MC 60297.
7	McLean Trucking Company, Inc.	MC 31389 (I).
8	Miller Motor Express.	MC 75339.
9	Atlantic States Motor Lines, Inc.	MC 30772 (I).
10	The Mason & Dixon Lines, Inc.	MC 53583 and Subs. (I).
11	G. & M. Motor Transfer Co.	MC 73673 (I).
12	Holland Brothers.	MC 73838 (I).
13	Ross Motor Lines, Incorporated.	MC 43608.
14	Central Motor Lines, Inc.	MC 24539 (I).
15	Kilgo Transfer Co., Inc.	MC 13298—Certificate.
16	R. C. Motor Lines, Inc.	MC 75651.
17	R. D. Fowler Motor Lines, Inc.	MC 19636 (I).
18	Old Hickory Motor Freight, Inc.	MC 25395.
19	Hooks Motor Lines.	MC 71185 (I).
20	Hooks Motor Lines.	MC 71185.
21	Motor Express, Inc.	MC 47171 (I).
22	Mundy Motor Lines.	MC 3474—Certificate.
23	Preston Trucking Company, Inc.	MC 1824.
24	Karl Lenker.	MC 3363.
25	A. A. A. Highway Express, Inc.	MC 34675.
26	Brooks Transportation, Inc.	MC 80382 and Subs. 1, 2, and 3—Certificate.
27	American Trucking Corporation.	MC 6202.
28	Georgia Highway Express, Inc.	MC 58923.
29	Atlantic Coast Freight Lines, Inc.	MC 15737.
30	Rutherford Freight Lines, Inc.	MC 60875.
31	New South Express Lines, Inc.	MC 38925—Certificate.
32	East Coast Freight Lines, Inc.	MC 75295.
33	Motor Transit Company.	MC 82333.
34	L. H. Bottoms Truck Lines, Inc.	MC 64658.
35	Overnight Motor Transportation Co.	MC 41776.
36	Thurston Motor Lines.	MC 76332.
37	Baltimore Transfer.	MC 1168.

Carrier	Name of line	I. C. C. Docket No.
38	Billings Transfer Corporation, Inc.	MC 2473—Certificate.
39	Cochrane Transportation Co.	MC 29664—Certificate.
40	Carolina-Norfolk Truck Line, Inc.	MC 62826.
41	Davidson Transfer & Storage Co.	MC 69281.
42	Tidewater Express Lines, Inc.	MC 1034.
43	Great Southern Trucking Co.	MC 2900.
44	Shein's Express, Inc.	MC 80904.
45	Joseph G. Whinney, Jr.	MC 35463.
46	Novick Transfer Co.	MC 7450—Certificate.
1742 47	Red Lines, Inc.	MC 66371—Certificate.
48	York Motor Express, Inc.	MC 1440.
49	Bristow Brothers	MC 80424—Certificate.
50	Victor Lynn Transportation Company	MC 65647.
51	Colonial Motor Freight Line	MC 1380.
52	Spotswood Transfer Co.	MC 68168.
53	Lewis & Holmes Motor Freight Corp.	MC 61446.
54	Great Coastal Express, Inc.	MC 4491.
55	ET & WNC Motor Transportation Co.	MC 60743.
56	Horlacher Delivery Service, Inc.	MC 60580—Certificate.
57	Fredrickson Motor Express Corp.	MC 28307—Certificate.
58	Dail Trucking Company, Inc.	MC 2950.
59	Tallant Transfer Company, Inc.	MC 59014 (III).
60	Davis Motor Lines, Inc.	MC 7614 and Sub. No. 1 (VII).
61	Turners Transfer	MC 66601 (I).
62	Hitchcock Motor Express	MC 8283.
63	C. L. Whitmore's Fast Freight.	MC 85235 (I).
64	Crescent Motor Lines, Inc.	MC 60756 and Sub. No. 1.
65	Steverson & Son	MC 93616 (I).
66	Alabama Highway Express, Inc.	MC 71516 (I).
67	Elders Transfer Company, Inc.	MC 3949 (I).
68	North-South Freightways, Inc.	MC 77365 (I).
69	Bondurant Motor Lines	MC 5712 (I).
70	Textile Truckers, Inc.	MC 29624.
71	James Walter Huckabee	MC 46016 (I).
72	McDougald Transfer Company	MC 60749 (VIII).
73	Joseph Allen Moore	MC 4485 (I).
74	Parker Transportation Co.	MC 66552 (I).
75	Savage Truck Line	MC 13832.
76	Southern United Lines, Inc.	MC 24403 (I).
77	Charles T. Brown Truck Lines	MC 75192 (I).
78	Disher Transfer & Storage Co.	MC 9710 (VIII), MC 9711.
79	Ernest L. Harner	MC 46036 (I).
80	M. P. Lippe	MC 7315 (VIII).
81	Charles Warren Fairwell, Jr.	MC 903 (I).
82	Richardson Motor Lines	MC 13722 (I).
83	Roy Stone Transfer Corporation	MC 61825 (I).
84	Whisnant Transfer Company	MC 92649 (I).
85	Wright Motor Lines	MC 74367 (I).
86	Stanleytown Motor Lines, Incorporated.	MC 63640 (II).
87	The Major Transfer Co.	MC 828 (I).
88	R. Glenn Winecoff	MC 45736 (VI).
89	Reliable Trucking Company, Inc.	MC 87588 (I).
90	Modern Transfer Co., Inc.	MC 35469.
91	Pee Dee Express, Inc.	MC 42203.
92	Blanton Trucking Co., Inc.	MC 41984.
93	Ernest C. Hendrix, Inc.	MC 16398 (I).
1743 94	Clay's Transfer	MC 31809.
95	Carlie McRoy Bowers	MC 84086—Certificate.
96	Clay Ryder	MC 25798 (I).
97	Scherr Hoffman Motor Lines, Inc.	MC 44142.
98	Carolina Transfer & Storage Co., Inc.	MC 30273 (I).
99	A. W. Hawkins, Inc.	MC 47874 (I).
100	Johnson Transfer Co.	MC 30280.
101	Motor Freight Express	MC 59057—Certificate.
102	H. W. Miller Trucking Co.	MC 41598, Sub. 2.
103	Central Jersey Motor Lines, Inc.	MC 37257.
104	Batesburg Hauling, Inc.	MC 66299—Certificate.
105	Lansdale-Philadelphia Express	MC 35713.
106	J. S. Mann	MC 61689.
107	Joseph Meltzer Transfer & Express, Inc.	MC 725 (I).
108	Brown Transfer & Storage Company	MC 21597—Certificate.
109	R. A. Byrnes, Incorporated.	MC 60186.
110	M. D. Hicklin	MC 76839—Certificate.
111	George W. Brown, Inc.	MC 65491 (I).
112	Middle Atlantic Transportation Co., Inc.	MC 44592.
	Burton Lines, Inc.	MC 389.

Carrier	Name of line	I. C. C. Docket No.
113	Miller's Motor Freight Service	MC 30243 (I).
114	York Transfer Company	MC 9000.
115	Motor Rail Company	MC 87035 (I).
116	Peoples Motor Express	MC 5835.
117	C. E. Buete & Sons, Inc.	MC 17781.
118	A. D. Pyle	MC 39140.
119	Union Storage & Warehouse Co., Inc.	MC 44091.
120	Garford Trucking, Inc.	MC 1091 (I).
121	Lucas Lines, Inc.	MC 310.
122	Fisher's Transfer	MC 30178.
123	Salem Express	MC 2249, Sub. 1—Certificate.
124	B & E Transportation Co., Inc.	MC 17778.
125	J. F. Short	MC 71085 (I).
126	Mays Transfer Company	MC 9143—Certificate.
127	Transportation Freight Forwarding Co.	MC 48275 (I).
128	Moore's Trucking Co., Inc.	MC 77479.
129	Smith's Transfer	MC 58541.
130	Tri-City Freight Lines	MC 666 (I).
131	Eastern Pioneer Transportation Co.	MC 19255.
132	Transport Corporation of Virginia	MC 44129 and Subs.
133	Textile Warehouse Company	MC 11402.
134	Russo Trucking Company	MC 59576 (2).
135	Princess Anne Motor Transportation	MC 46073 (I).
136	Overnite Transportation, Inc.	MC 76560.
137	Nick Stefanelle	MC 25894 (I).
138	Bingham Motor Express Co., Inc.	MC 19.
139	Wilson Trucking Corporation	MC 64000.
140	The A A A Trucking Corporation	MC 3753.
141	White's Express Company, Inc.	MC 84775 (I).
142	Jones Motor Company	MC 4983.
143	J. C. Milstead Transfer	MC 84605 (I).
144	Harrison Motor Freight	MC 29512 (I).
145	Capitol Motor Lines, Incorporated	MC 10296—Certificate.
146	Exchange Forwarding Corporation	MC 51211.
147	American Transfer Co.	MC 36746.
148	Needham's Motor Service, Inc.	MC 38921.
149	Savage Truck Line	MC 12832.
150	Lippincott's Express	MC 60909, Sub. 1.
151	Eastern Motor Express	MC 70001—Certificate.
152	Albert's Delivery Service	MC 31111.
153	McLeod's Transfer, Inc.	MC 2240 (I).
154	Apex Express, Inc.	MC 31044.
155	Champion Storage & Trucking Co.	MC 42501—Certificate.
156	Atkinson Motor Freight Co., Inc.	MC 43707.
157	Booze Truck Lines	MC 1925.
158	Charley's Express, Inc.	MC 2257.
159	James H. Cochrane	MC 76267 (I).
160	Gale's Trucking Service	MC 35664.
161	Champion Storage & Trucking Co.	MC 42501—Certificate.
162	Jendley's Express & Storage, Inc.	MC 18889.
163	Geo. Thomas Miles	MC 52527 and Sub. 1.
164	Jersey Coast Transfer Co., Inc.	MC 50491.
165	T. H. Rash	MC 37248—Certificate.
166	New York & New Brunswick Auto Express Co., Inc.	MC 30332.
167	O. C. Wiley & Sons, Inc.	MC 60284 (I).
168	Rupp Trucking Company, Inc.	MC 7850 (I).
169	John Lewis Patterson	MC 63541.
170	The Shippers Freight Forwarding Company	MC 220 (I).
171	Textile Motor Lines, Inc.	MC 78386.
172	Frank P. Sickinger	MC 31366.
173	R. Glenn Winecoff	MC 4736 (VI).
174	Cumberland Motor Express Corp.	MC 40396.
175	American Brokerage & Warehouse Co.	MC 65816.
176	Marshall's Express	MC 30276.
177	Carolina Transfer Company	MC 20695.
178	Sullivan Lines	MC 47109 (I).
179	E. J. Jans Transfer Company	MC 24980.
180	John D. Blair, Jr., d/b/a Wehaulem	MC 16295 (I).
181	Standard Bonded Warehouse Co.	MC 39978.
182	Draper Motor Service	MC 41875.
183	Greyvan Lines, Inc.	MC 14786 (I).
184	Scheer Hoffman Motor Lines, Inc.	MC 44142.
185	L. F. Berry	MC 2697.
186	Shore Transportation Co.	MC 50433.
187	Centre Trucking Company, Inc.	MC 46875 (I).

Carrier	Name of line	I. C. C. Docket No.
188	Red Lion Moving Co., Inc.	MC 22520.
189	Marvin Widenhouse	MC 74171.
190	Kelly Motor Lines	MC 84404.
191	Berry & Decker Transfer	MC 3130 and Sub. 1—Certificate.
192	Shaw Transfer Company	MC 64112.
193	Textile Motor Freight	MC 7555—Certificate.
1745 194	Southern Motor Express, Inc.	MC 2913 (V).
195	C. B. Green & Son	MC 3120 and Sub. No. 1—Certificate.
196	J. C. Bankett	MC 74390.
197	Blue Ridge Transfer Co., Inc.	MC 63417 and Sub. No. 1 (I).
198	Hitchcock Motor Express	MC 8283.
199	Southern Storage Warehouse Co., Inc.	MC 1745.
200	Bruce Johnson	MC 30446.
201	Lota H. Yeatts	MC 30237.
202	S. & W. Motor Lines	MC 40608.
203	F. P. Eller Trucking Company, Inc.	MC 62110.
204	Northeastern Lines, Inc.	MC 41235 (I).
205	Billings Transfer Corporation, Inc.	MC 2473—Certificate.
206	W. R. Candler Transfer Co.	MC 37421.
207	Griffin Transfer Company	MC 89833—Certificate.
208	R. M. Hazelwood	MC 50566—Certificate.
209	Owens Transfer Co.	MC 40382.
210	Pinnix Transfer Co.	MC 61264—Certificate.
211	Winfree Transfer	MC 89240.
212	Fleming Transfer	MC 19617, Sub. 1 (I).
213	Lloyd E. Coleburn	MC 40712.
214	Clay's Transfer	MC 31809.
215	M. C. Garner	MC 63295.
216	Henderson Bonded Lines	MC 80990 (I).
217	C. S. Henry Transfer	MC 38154.
218	Southern Motor Express, Inc.	MC 2913 (V).
219	Thaddeus J. Snyder	MC 1621.
220	H. Earle Pitzer	MC 51661, Sub. 1 and 2.
221	Dade Brothers	MC 68073.
222	Mabel Daugherty Bryant	MC 22463 (I).
223	Joseph Toussaint	MC 26404 (I).
224	John David Barrieks	MC 30082.
225	Jimmie Thomas Bryant	MC 51012.
226	Buglio Trucking Company	MC 60183.
227	Morris Tarber	MC 15874.
228	American Transfer Co.	MC 26746.
229	Edna J. Beaver	MC 66900.
230	Red Line Transfer Co.	MC 33953—Certificate.
231	Roy Rittenhouse	MC 2081—Certificate.
232	August Apel, Jr.	MC 11679 (I).
233	Charles O. Keetle	MC 27751, Sub. 1.
234	Reuben Shapiro, d/b/a Famous Trucking Co.	MC 95788.
235	E. A. Gallagher	MC 77560 (I).
236	Geo. H. Louderback	MC 9909—Certificate.
237	Charles Needing Trucking Co., Inc.	MC 43749—Certificate.
238	Harold C. Mount, Inc.	MC 1908.
239	Olney Trucking Co., Inc.	MC 2700 (I).
1746 240	Branch Motor Express Company	MC 10876.
241	Mark Anthony	MC 92138.
242	Martin M. Derr	MC 1106.
243	Louis L. Evans	MC 78619.
244	James A. Stevensen	MC 33556.
245	Lorenzetti & Son	MC 1904.
246	The A A A Trucking Corporation	MC 3753.
247	Joseph G. Whinnay, Jr.	MC 35463.
248	C & C Trucking Company, Inc.	MC 40087.
249	South Hudson Trucking Company, Inc.	MC 39909—Certificate.
250	Penn-New Jersey Transportation Company	MC 5380.
251	Greenberg's Fast Freight	MC 14935.
252	Theodore Diebold	MC 16827.
253	Bitler's Transfer Company, Inc.	MC 27845.
254	Askin Trucking Company, Inc.	MC 30027.
255	Willard M. Whitney	MC 68807.
256	A. E. F. Transportation Service	MC 21077, Sub. 1.
257	Bruno Brothers	MC 2111.
258	Tatum Dalton Transfer Company	MC 33002 (IV).
259	Gibbons & Wilson Transfer, Inc.	MC 3804.
260	Hunter Motor Freight, Inc.	MC 8298 (I).
261	Textile Truckers, Inc.	MC 29624 (I).
262	Taylor & Son	MC 32680.

Carrier	Name of line	I. C. C. Docket No.
263	J. W. Propst, Jr., Inc.	MC 47603.
264	The Peninsula Corporation	MC 14449, Sub. 1.
265	Samuel Wilford Martin	MC 76477.
266	Jerre's Arrow Line	MC 55486—Certificate.
267	Charles Gerber	MC 94397.
268	Coffman Brothers	MC 1072.
269	William Thomas Taylor, Jr.	MC 24594.
270	J. T. Brown Drayage Company	MC 75865—Certificate.
271	Wm. Thos. Taylor, Jr.	MC 24594.
272	Timed Freight Transportation Co.	MC 14760.
273	Swift Transfer Company	MC 11020—Certificate.
274	Great Coastal Express, Inc.	MC 4491.
275	Southern Spindle & Flyer Co., Inc.	MC 43463.
276	T. W. Gregory	MC 445.
277	Carmichael's Transfer	MC 1619.
278	David Leslie Maitland	MC 44401.
279	Vance Trucking Company, Inc.	MC 63080 (IX)—Certificate.
280	C. O. Bumgarner	MC 15966.
281	Marvin Wade, Jr. Transfer	MC 49211.
282	Stephen J. Gaglione	MC 35001.
283	Gus Dull's Transfer Company	MC 61249.
284	Hugh A. Via	MC 27243.
285	Burton Lines, Inc.	MC 2654.
286	Staunton Motor Transport, Incorporated	MC 20659.
287	Brown Motor Lines & Stg. Company	MC 32020.
288	White Truck Line	MC 38171.
289	Jocie Motor Lines, Inc.	MC 60290 (I).
290	Warren Transfer Company	MC 52368.
291	Lowther Trucking Company	MC 2545.

1747 X Service unknown; point included in certificate.

(I) Application pending before Commission.

(II) Application pending, claims general commodities from area in Virginia to points in other states and on return from those states to Virginia and North Carolina.

(III) Certificate authorizes general commodities with usual exceptions from points in states Florida through New Jersey and New York Commercial Zone to Hickory and points within 25 miles thereof.

(IV) Certificate also provides for general commodities between Greensboro and points within 60 miles thereof.

(V) Also includes authority to transport general commodities, with usual exceptions, between Lincolnton, North Carolina, and New York City.

(VI) Also includes special commodities from certain points in North Carolina to Baltimore, Philadelphia, New York City, Chicago, Columbus, Norfolk, and certain return commodities.

(VII) This carrier is known to be operating over greater part of Atlantic Seaboard, extending at least from Greenville, S. C., to New England, but details respecting services beyond are not known. Application pending.

(VIII) Carrier is known to be operating between East and South, but exact details are not known. Application pending.

(IX) This carrier also has rights to transport general commodities, with usual exceptions between Baltimore, Maryland, and Henderson, North Carolina, including Richmond and other intermediate points.

*Exhibit No. 17*

Before the Interstate Commerce Commission  
Re Application The Associated Transport, Inc.

Witness, Joseph P. Mead.

PARTIAL LIST OF MOTOR CARRIERS SERVING SAME TERRITORY AS  
M. MORAN TRANSPORTATION LINES, INC.

[illegible]

1E	10									
1F	12									
2	8									
2A	9									
2B	10									
2C	12									
2D	17									
2E	24									
2F	20									
3	7									
3A	6									
3B	8									
3C	10									
3D	11									
3E	25									
	14									
4A	17									
4B	17									
4C	21									
4D	28									
5	19									
1749										
5A	19									
5B	18									
5C	22									
6	20									
6A	19									
6B	21									
7	19									
7A	16									
8	23									

Route No.	Number of carriers	Cleveland, O.	Erie, Pa.	Buffalo, N. Y.	Rochester, N. Y.	Syracuse, N. Y.	Albany, N. Y.	Beyond Albany, N. Y.
9	3							
10	4							
11	7							
12	7							
13	9							
14	6							

1750	Route No.	Number of carriers	Cleveland, beyond	Cleveland, O.	Erie, Pa.	Jamestown, N. Y.	Olean, N. Y.	Elmira, N. Y.	Buchanan, N. Y.	Philadelphia, Pa.	Philadelphia, beyond
15		4									
15A		4									
15B		4									
15C		5									
15D		5									
15E		6									
16		4									
16A		6									
16B		4									
16C		5									
16D		3									
16E		5									
17		4									
17A		6									
17B		5									
17C		5									
17D		6									
17E		4									
18		4									
18A		6									
18B		3									
18C		2									
18D		3									
19		4									
19A		5									
19B		6									
19C		5									
20		4									
20A		11									
20B		7									
21		1									
21A		13									

17A									
17D	6								
17E	7								
18	4								
18A	6								
18B	3								
18C	2								
18D	3								
19	4								
19A	5								
19B	6								
19C	5								
20	4								
20A	11								
20B	7								
21	4								
21A	13								

1751	Route No.	Number of carriers	Albany, N. Y.	Utica, N. Y.	Syracuse, N. Y.	Binghamton, N. Y.	Philadelphia, Pa.	Philadelphia, beyond
22		5						
22A		5						
22B		7						
23		6						
23A		4						
24		8						
24A		6						
25		4						

	Route No.	Number of carriers	Buffalo, N. Y.	Rochester, N. Y.	Elmira, N. Y.	Binghamton, N. Y.	Philadelphia, Pa.	New York, N. Y.	Olean, N. Y.	Beyond Albany, N. Y.
26		14								
26A		10								
26B		10								
27		11								
27A		6								
28		12								
28A		14								
29		6								
30		6								
31		1								
31A		1								

Docket	Name of carrier	Address	Routes
30205-84698	A. & B. Fast Freight, Inc.	Akron, Ohio	2E, 2D, 2C, 2B, 2F, 19C, 19B, 19A, 26, 17A.
30138	A. C. E. Transportation Co., Inc.	Akron, Ohio	1, 9.
2200	Acme Fast Freight, Inc.	New York, N. Y.	1, 1A, 1B, 1C, 1D, 1F, 2, 2A, 2B, 2C, 2D, 2E, 2F, 3, 3A, 3B, 3C, 3D, 3E, 4, 4A, 4B, 4C, 4D, 5, 5A, 5B, 5C, 6, 6A, 6B, 7, 7A, 8, 9, 10, 11, 12, 13, 14, 15, 15A, 15B, 15C, 15D, 16E, 16, 16A, 16B, 16C, 16E, 17, 17A, 17B, 17C, 17D, 17E, 18, 18A, 19, 19A, 20, 20A, 21, 21A, 22, 22A, 22B, 23, 23A, 24, 24A, 25, 26, 26A, 26B, 27, 27A, 28, 28A, 29, 30.
72444	Akron-Chicago Transp. Co., Inc.	Akron, Ohio	1A, 1B, 1C, 1D, 1E, 1F, 21A, 18B, 19B, 2A, 2B, 2C, 2D, 2E, 2F, 4A, 26B, 3B, 3C, 3D, 3E, 4B, 4C, 4D, 5A, 5B, 5C, 6A, 6B, 7A, 18A, 18D, 24A, 29.
66653	All States Freight, Inc.	Akron, Ohio	2A, 2B, 2C, 2D.
1406	Amsterdam Dispatch, Inc.	Amsterdam, N. Y.	8.
15737	Atlantic Coast Freight Lines, Inc.	Baltimore, Md.	27, 26.
29943	Axe & Arthur Motor Ex- press.	Syracuse, N. Y.	5C.
67585	B & E Transportation	New York, N. Y.	8.
67215	B & S Transportation Co., Inc.	South Boston, Mass.	13, 6A, 7A, 14, 6B, 13.
52214	Batavia Motor Lines	Batavia, N. Y.	4D.
43046	Beach Transportation Co.	New York, N. Y.	4, 5, 6, 7, 8, 30, 28, 28A, 4A, 4B, 4C, 4D, 5A, 5B, 5C, 6A, 6B, 7A, 3, 3A, 3B, 3C, 3D, 3E.
90194	Benns, H. N., Auto Exp., Inc.	Syracuse, N. Y.	6B.
18215	Berger, A. J., Transp. Lines, Inc.	Gardenville, N. Y.	2E, 3E, 4, 4A, 26.
63861	Bernstein, B. L.	Passaic, N. J.	8.
48022	Boston Buffalo Express, Inc.	Cambridge, Mass.	4A, 5A, 5B, 5C, 6A, 6B, 7A.
20178	Bowers Trans. Lines	Pittsburgh, Pa.	3E.
59923	Boyce Motor Lines	Canandaigua, N. Y.	4, 5, 6, 7, 8, 20A, 21A, 22A, 23, 24, 26, 27, 28, 28A.
79945	Buffalo & Lockport Transp. Co.	Lockport, N. Y.	4D, 4C.
18254	Buffalo Storage & Carting Co.	Buffalo, N. Y.	2E, 2D, 2C, 3E, 2F, 3D, 3C.
40394	C. & M. Forwarding Co.	Rochester, N. Y.	5.
2589	C. A. B. Y. Transporta- tion Co.	Cleveland, Ohio	2D, 2E, 2F, 3D, 4D.
29929	Canny Trucking Co., Inc.	Binghamton, N. Y.	28, 28A.
34483	Central New York Freight- ways, Inc.	Yonkers, N. Y.	4, 5, 6, 7, 8, 28, 28A, 4A, 4C, 4D, 26A, 26B, 5A, 5C, 27A, 29, 6A, 24A, 20B, 22B.
6884	Cimpi, A.	Auburn, N. Y.	6, 24.
60391	Cleveland & Buffalo Transit Co.	Cleveland, Ohio	2E.
75264	Coleman Bros. Transp. Lines.	Rome, N. Y.	6B.
64630	Cowan, W. T., Inc.	Baltimore, Md.	21A.
18198	Cox Transportation Co.	Cleveland, Ohio	1D, 1E, 1F, 2D, 2E, 2F, 3D, 3E, 4D.
42654	Dixie Ohio Express Co.	Akron, Ohio	1E, 1F, 2F, 3E.
84212	Dorn's Transportation	Rensselaer, N. Y.	8.
76995	Erie Freight Lines, Inc.	Cleveland, Ohio	2A, 2B, 2C, 2D, 2E, 2F.
65144	Freer Bros. Motor Express Lines.	Ithaca, N. Y.	24A.
41594	Glens Falls-New York Ex- press, Inc.	Glens Falls, N. Y.	8.
3339	Globe Cartage	Indianapolis, Ind.	2E.
1401	Goetzman & Newman	Newark, N. Y.	5C.
18480	Hardinger Transfer	Erie, Pa.	3E.
29996	Highway Freight	Jersey City, N. J.	4, 5, 6, 7, 8.
72033	Interstate Magazine Haul- ing Corp.	New York, N. Y.	7, 8.

Docket	Name of carrier	Address	Routes
35628	Interstate Motor Freight System	Grand Rapids, Mich.	1, 1A, 1B, 1C, 1D, 1F, 2, 2A, 2B, 2C, 2D, 2E, 2F, 3, 3A, 3B, 3C, 3D, 3E, 4, 4A, 4B, 4C, 4D, 5, 5A, 5B, 5C, 6, 6A, 6B, 7, 7A, 8, 9, 10, 11, 12, 13, 14, 15, 15A, 15B, 15C, 15D, 15E, 16, 16A, 16B, 16C, 16E, 17, 17A, 17B, 17C, 17D, 17E, 18, 18A, 19, 19A, 20, 20A, 21, 21A, 22, 22A, 22B, 23, 23A, 24, 24A, 25, 26, 26A, 26B, 27, 27A, 28, 28A, 29, 30, 16D, 18D, 18C, 18B, 19B, 19C, 20B, 4D, 4C, 4B, 4A, 11, 4, 5C, 5B, 5A, 5, 12, 6, 6A, 6B, 13, 7A, 7, 8, 14, 26B, 26A, 26, 20A, 20B, 21A, 22.
3566	Keeshin Motor Express Co., Inc.	Chicago, Ill.	4D, 4C, 4B, 4A, 11, 4, 5C, 5B, 5A, 5, 12, 6, 6A, 6B, 13, 7A, 7, 8, 14, 26B, 26A, 26, 20A, 20B, 21A, 22.
75809	Kultau Motor Express	Pittsburgh, Pa.	3E.
41091	Lake Shore Transp. Lines, Inc.	Rochester, N. Y.	4D.
65135	Langdon, Fred D.	Lyndonville, N. Y.	5.
7663	Lapp Express Co., Inc.	Medina, N. Y.	4D.
30021	Leavenworth Exp. & Refrigerator Service	Elmira, N. Y.	20B, 26A.
47327	Lyons Transportation Co., Inc.	Erie, Pa.	2E, 2F, 3E, 16D, 17F, 18D, 16E, 17E.
47647	Martin Transit Service, Inc.	Buffalo, N. Y.	3E.
10899	McCullough Transfer, Inc.	Youngstown, Ohio	2E, 2F, 3E, 17E.
61502	McCullough, Wm. Transp. Co., Inc.	E. Rutherford, N. J.	6, 7, 8, 28A, 6A, 6B, 7A.
28008	Midwest Freight Forwarding Co.	Chicago, Ill.	1.
60827	Motor Age Transit Lines.	Buffalo, N. Y.	3E.
3420	Motor Express, Inc.	Cleveland, Ohio	1E, 1F, 2E, 2F.
65280	Mushroom Transp., Co., Inc.	Kennett Square, Pa.	21A, 26, 27.
3456	Mutual Trucking Co.	Toledo, Ohio	1, K, 1D, 1E, 1F, 2, 2C, 2D, 2E, 2F, 3, 3C, 4C, 4D, 5, 5C, 6.
40639	National Carloading Corp.	New York, N. Y.	1, 1A, 1B, 1C, 1D, 1F, 2, 2A, 2B, 2C, 2D, 2E, 2F, 3, 3A, 3B, 3C, 3D, 3E, 4, 4A, 4B, 4C, 4D, 5, 5A, 5B, 5C, 6, 6A, 6B, 7, 7A, 8, 9, 10, 11, 12, 13, 14, 15, 15A, 15B, 15C, 15D, 15E, 16, 16A, 16B, 16C, 16E, 17, 17A, 17B, 17C, 17D, 17E, 18, 18A, 19, 19A, 20, 20A, 21, 21A, 22, 22A, 22B, 23, 23A, 24, 24A, 25, 26, 26A, 26B, 27, 27A, 28, 28A, 29, 30.
26771	Nestor Brothers	Endicott, N. Y.	28A.
1754 9826	Newell Trucking Co.	Dunkirk, N. Y.	3E.
1770	Niagara Motor Express, Inc.	Syracuse, N. Y.	4A, 5A, 6A, 7A, 4B, 5B, 6B, 4C, 5C, 4D.
83430	Oneida Motor Freight, Inc.	New York, N. Y.	5, 6, 7, 8, 27, 5A, 5B, 5C, 6A, 6B, 7A.
22334	Onondaga Freight Corp.	New York, N. Y.	4, 11, 4A, 4D, 4C, 4B, 5, 12, 5A, 5B, 5C, 6, 13, 6A, 6B, 7, 7A, 8, 1D, 1E, 1F, 15C, 15D, 15E, 2D, 2E, 3E, 16E, 16D, 4D, 16C, 26B, 2F.
MC-F-828	Penn-Ohio-New York Express Corp.	Erie, Pa.	4B, 4C, 4D, 26B, 29, 4, 5, 6, 7, 28.
40147	Poray's Express Lines, Inc.	Rochester, N. Y.	8.
32242	Purdie, N. C., Corp.	Stanley, N. Y.	4C, 4D, 5C.
40169	Radley, Ernest	Albany, N. Y.	2, 5, 6, 7, 8, 4A, 4B, 4C, 4D, 5A, 5B, 5C, 6A, 6B.
17550	Raz Delivery Co.	Rochester, N. Y.	26A, 27A.
75004	Red Star Express Lines of Auburn, Inc.	Auburn, N. Y.	3E, 3A, 3B, 3C, 3D, 3, 17A, 17C, 17B, 17E, 17D, 4, 4A, 4B, 4C, 4D, 5, 5A, 5B, 5C, 6, 6A, 6B, 7, 7A, 8, 26B, 26A, 26, 20B, 20A, 28, 28A, 21A, 18D, 18C, 18B, 18A.
59135			
73160	Rhinevault Trucking Co., Inc.	Endicott, N. Y.	
77668			
30899	Richards Motor Freight Lines.	Scranton, Pa.	

Docket	Name of carrier	Address	Routes
2202	Roadway Express, Inc.	Akron, Ohio	2, 2A, 2B, 2C, 2D.
7514	Roadway Transit Co.	Detroit, Mich.	21F, 2E, 2F.
60663	Ruffalo Trucking Service, Inc.	Newark, N. Y.	5.
30271	S. & S. Transp. Co.	Wolcott, N. Y.	4D.
60660	S. & W. Express Lines	Rochester, N. Y.	4C.
21995	Safeway Truck Lines	Chicago, Ill.	1E, 2E.
3360	Seaboard Freight Lines, Inc.	New York, N. Y.	1E, 1F, 2E, 2F.
43735	Seneca Lines, Inc.	Elmira, N. Y.	28, 28A, 31, 31A, 22B, 20A.
70383	Shippers Dispatch, Inc.	Chicago, Ill.	1E, 2E, 3E.
1658	Shirks Motor Express Corp.	Lancaster, Pa.	26, 27.
857	Spinnella, Rosario	Fulton, N. Y.	6.
59265	Stibbs Transp. Lines, Inc.	Syracuse, N. Y.	4A, 5A, 6A, 7A, 4B, 4C, 4D, 5A, 5B, 5C, 6A, 6B, 7A, 11, 12, 13, 4D.
60609	Stott & Davis Motor Express	Syracuse, N. Y.	4D.
81934	Thurston Transp. & Storage, Inc.	Tonawanda, N. Y.	4A, 5A, 6A, 7A, 4B, 4C, 4D, 5B, 5C, 6B.
10761	Transamerican Freight Lines, Inc.	Detroit, Mich.	1, 1D, 1E, 1F, 2, 2D, 2E, 2F, 3E, 15E, 16E, 16A.
57501	Transportation Lines, Inc.	New York, N. Y.	4, 5, 6, 7, 8, 30, 28A, 4A, 4B, 4C, 4D, 5A, 5B, 5C, 6A, 6B, 28, 20B, 19B, 19C.
30086	Universal Carloading & Dist. Co.	New York, N. Y.	1, 1A, 1B, 1C, 1D, 1F, 2, 2A, 2B, 2C, 2D, 2E, 2F, 3, 3A, 3B, 3C, 3D, 3E, 4, 4A, 4B, 4C, 4D, 5, 5A, 5B, 5C, 6, 6A, 6B, 7, 7A, 8, 9, 10, 11, 12, 13, 14, 15, 15A, 15B, 15C, 15D, 15E, 16, 16A, 16B, 16C, 16E, 17, 17A, 17B, 17C, 17D, 17E, 18, 18A, 19, 19A, 20, 20A, 21, 21A, 22, 22A, 22B, 23, 23A, 24, 24A, 25, 25, 26A, 26B, 27, 27A, 28, 28A, 29, 30.
1755	33768 Utica-New York Transp.	New York, N. Y.	6, 7, 8, 20B, 28, 28A.
60883	Valetta, Frank S.	Endicott, N. Y.	21A, 22B, 28A.
10614	Vollmer Transp.	Amsterdam, N. Y.	22C, 7.
8902	Western Express Co.	Cleveland, Ohio	2B, 2C, 2D, 2E, 2F, 31F, 3C, 3D, 3E, 4B, 4C, 4D, 5B, 5C, 6B.
35463	Whinnys Express	Philadelphia, Pa.	20A, 21A, 24, 26, 27.
23409	Wolfe, G. E., Transp. Lines, Inc.	Holland, N. Y.	3E.
32411	Woodin's Express	Troy, N. Y.	5A.
22638	York Buffalo Motor Express.	York, Pa.	24, 26, 27, 18A, 19A, 20A, 21A, 5B, 6B, 4D.



1757

*Exhibit No. 18*

Before the Interstate Commerce Commission

Re Application The Associated Transport, Inc.

Witness: Mead.

## LIST OF RAIL CARRIERS SERVING POINTS SHOWN ON MAP (EXHIBIT C-5 OF APPLICATION) OF ROUTES AND TERRITORIES INVOLVED IN THIS PROCEEDING

Cities	Railways
Abingdon, Va.	Norfolk and West.
Albany, N. Y.	Boston & Albany; Delaware & H.; N. Y. Cent.; West Shore.
Albentown, Pa.	Cent. of N. J.; Lehigh & New Eng.; Lehigh Valley; Reading System.
Asbury Park, N. J.	Cent. of N. J.; N. Y. & Long Branch; Penna.
Asheboro, N. C.	High Point, Rand. A. & S.; Norfolk South.
Asheville, N. C.	Southern.
Athens, Ga.	Central of Ga.; Gainesville Midland; Georgia; Seaboard; Southern.
Atlanta, Ga.	Atlanta & W. Point; Atl. Birm. & Coast; Central of Ga.; Georgia; Louisville & Nashville; Nashv. Ch. & St. L.; Seaboard; Southern; Cent. of N. J.; Penna.; Pa.-Rdg.; Seashore Line.
Atlantic City, N. J.	Penna.; Balt. & Annapolis; B. & O.; West. Maryland; Maryland & Penna.; Balt. & Eastern.
Baltimore, Md.	Erie; Lehigh Valley; N. Y. C.
Batavia, N. Y.	Delaware & Hud.; D. L. & W.; Erie.
Binghamton, N. Y.	Boston & Albany; Boston & Maine; N. Y. N. H. & H.; Union Freight.
Boston, Mass.	N. Y. N. H. & H.
Bridgeport, Conn.	Norfolk and West.; Southern.
Bristol, Tenn.-Va.	B. & O.; Buffalo Creek; D. L. & W.; Erie; Grand Trunk; Lehigh Valley; Michigan Cent.; N. Y. Cent.; N. Y. Chic. & St. Louis; Penna.; Pere Marquette; South Buffalo; Wabash; West Shore.
Buffalo, N. Y.	Southern.
Burlington, N. C.	Penna.; Reading.
Camden, N. J.	N. Y. N. H. & Hartford.
1758 Canaan, Conn.	Penna.
Cape Charles, Va.	N. Y. Central.
Carthage, N. Y.	Penna.; Western Md.
Chambersburg, Pa.	Norfolk Southern; Seaboard; Southern.
Charlotte, N. C.	Carolina & Northw.; Seaboard; Southern; Lane. & Chester.
Chester, S. C.	B. & O.; Cl. Cin. C. & St. L.; Erie; N. Y. C. R. R.; Penna.
Cleveland, O.	D. L. & W.; Erie; N. Y. C. R. R.
Corning, N. Y.	B. & O.; Cumberland & Pa.; Penna.; Western Md.
Cumberland, W. Va.	Louisville & Nashville; Southern.
Cumberland Gap, Tenn.	N. Y. N. H. & H.
Danbury, Conn.	Danville & Western; Southern.
Danville, Va.	Atlau. & St. Andrews Bay; Atl. Coast Line; Cent. of Georgia.
Dothan, Ala.	Penna.
Dover, Del.	Durham & Southern; Norfolk & West.; Norfolk Southern; Seaboard; Southern.
Durham, N. C.	Del., Lack. & West.; Erie; Lehigh Valley; Pennsylvania.
Elmira, N. Y.	Bes. & Lake Erie; N. Y. Central; N. Y. C. & St. L.; Penna.
Erie, Pa.	Aberdeen & Rock.; Atl. Coast Line; Norfolk Southern.
Fayetteville, N. C.	Boston & Maine; N. Y. N. H. & H.
Fitchburg, Mass.	Louisville & Nashville.
Flomaton, Ala.	Tallah. Falls.
Franklin, N. C.	B. & O.; Hagerstown & Fred.; Penna.
Frederick, Md.	Rich. Fred. & Pot.; Virginia Central.
Fredericksburg, Va.	Del., Lack. & West.; N. Y. Cent.; N. Y. Ont. & West.
Fulton, N. Y.	Lehigh Valley; N. Y. Cent.
Geneva, N. Y.	Reading Sys.; Western Md.
Gettysburg, Pa.	Del. & Hudson.
Glens Falls, N. Y.	Boston & Maine.
Gloucester, Mass.	N. Y. N. H. & H.
1759 Great Barrington, Mass.	Seaboard.
Great Falls, S. C.	Boston & Maine.
Greenfield, Mass.	Atl. & Yarkin; Southern.
Greensboro, N. C.	Charleston & West Carolina; Greenville & Northern; Piedmont & Northern; Southern.
Greenville, S. C.	B. & O.; Hagerstown & Frederick; N. & W.; Penna.; Western Md.
Hagerstown, Md.	Penna.; Reading.
Harrisburg, Pa.	New Haven.
Hartford, Conn.	Boston & Maine.
Haverhill, Mass.	

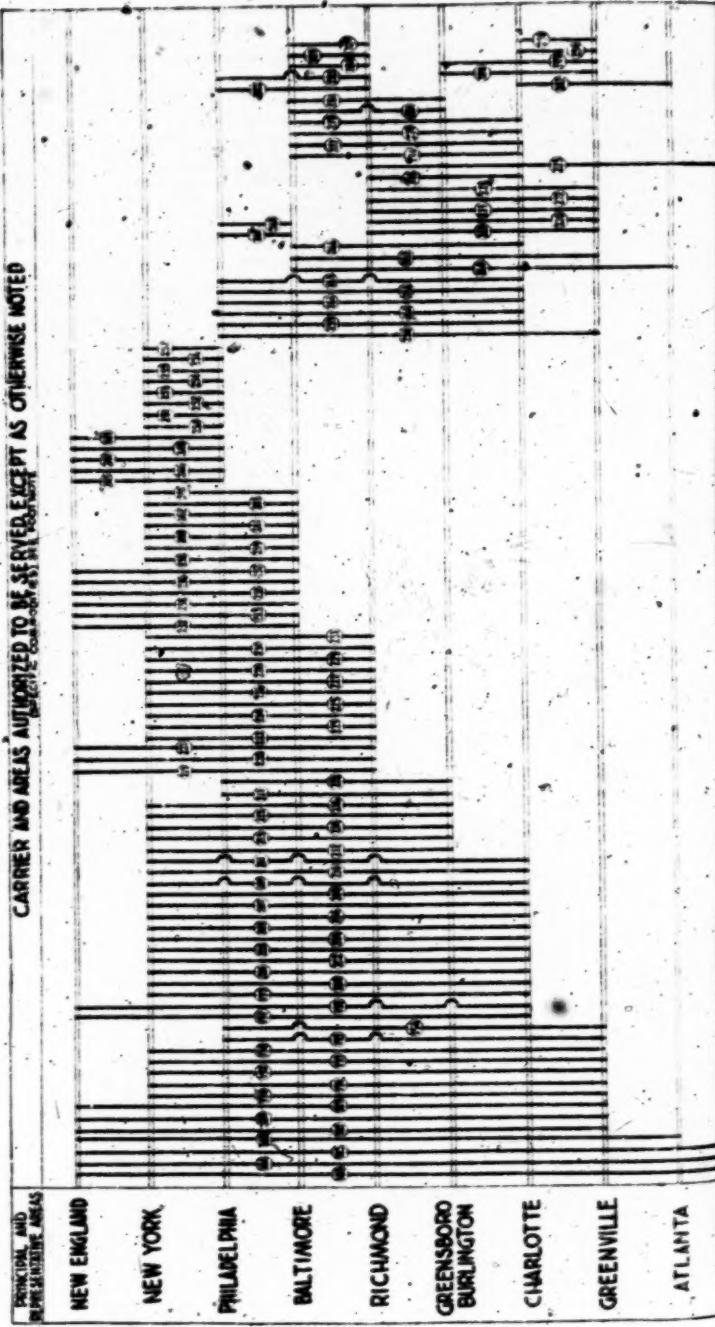
Cities	Railways
Hazleton, Pa.	B. & O.
Hendersonville, N. C.	Southern.
High Point, N. C.	High Point Rand. Ash. & Sou.; High Point, Thomas. & Denton; Southern.
Hudson, N. Y.	Boston Albany; N. Y. Cent.
Jamestown, N. Y.	Erie; Jamestown Westfield & Northwestern.
Johnson City, Tenn.	Clinchfield; E. Tenn. & W. N. C.; Southern.
Kingsport, Tenn.	Clinchfield.
Knoxville, Tenn.	L. & N.; Smoky Mountain; Southern.
Lancaster, Pa.	Penna.; Reading.
Lewiston, Pa.	Penna.
Lexington, N. C.	Southern; Winston-Salem South Bound.
Lexington, Va.	B. & O.; C. & O.
Lock Haven, Pa.	N. Y. Cent.; Penna.
Lockport, N. Y.	Erie; N. Y. Cent.; Intl.
Lowell, Mass.	Boston & Maine; N. Y. N. H. & H.
Lynchburg, Va.	C. & O.; N. & W.
Malone, N. Y.	N. Y. Cent.; Rutland.
Maryville, Tenn.	Louisville & Nashville; Southern.
McColl, S. C.	Atl. Coast. Line; Seaboard.
Mobile, Ala.	A. T. & N.; G. M. & O.; L. & N.; Southern.
Montgomery, Ala.	A. C. L.; Cent. of Ga.; G. M. & O.; L. & N.; Seaboard; Western Ry. of Ala.
1760 Murfreesboro, Tenn.	N. C. & St. L.
Nashville, Tenn.	L. & N.; N. C. & St. L.; Nashville Franklin; Tenn. Cent.
Newark, N. J.	B. & O.; C. of N. J.; D. L. & W.; Erie; Hudson & Manhattan, Lehigh Valley; Penna.
New Bedford, Mass.	N. Y. N. H. & H.
New Brunswick, N. J.	Penna.; Haritan River.
New Haven, Conn.	N. Y. N. H. & H.
New London, Conn.	N. Y. N. H. & H.; Cent. of Vt.
New Orleans, La.	G. M. & O.; I. C.; L. & A.; La. Southern; L. & N.; Mo. Pac.; New Orleans & Lower C.; Southern; Tex. of New O.; Sou. Pac.; T. & P.; T. P. Mo. Pac.
New York, N. Y.	B. & O.; Central R. R. of N. J.; D. L. & W.; Erie; Hudson & Manhattan; Lehigh Valley, L. I.; N. Y. Central; N. Y. N. H. & H.; N. Y. O. & W.; N. Y. Susq. & West; Penna.; S. I. Rapid Transit, West Shore.
Niagara Falls, N. Y.	Erie; Intl.; Lehigh; Michigan Central; N. Y. Cent.; Niag. Junction.
Norfolk, Va.	A. C. L.; C. & O.; N. & W.; Norfolk Sou.; Penna.; Seaboard; Southern; Virginian.
North Adams, Mass.	B. & A.; B. & M.
Ogdensburg, N. Y.	N. Y. Cent.; Rutland.
Olean, N. Y.	Erie; Penna.; P. S. & N.
Owego, N. Y.	D. L. & W.; Erie; Lackawanna.
Paterson, N. J.	D. L. & W.; Erie; N. Y. S. & W.
Peekskill, N. Y.	N. Y. Cent.
Pensacola, Fla.	L. & N.; Frisco.
Petersburg, Va.	A. C. L.; N. & W.; Seaboard.
Philadelphia, Pa.	B. & O.; Penna.; Reading.
Pittsburgh, Pa.	B. & O.; Penna.; P. & L. E.
Plattsburg, N. Y.	D. & H.
Plymouth, Mass.	N. Y. N. H. & H.
Poughkeepsie, N. Y.	N. Y. Central; N. Y. N. H. & H.
Providence, R. I.	New Haven.
Putnam, Conn.	N. Y. N. H. & H.
1741 Raleigh, N. C.	Norfolk Sou.; Seaboard; Southern.
Reading, Pa.	Penna.; Reading.
Richmond, Va.	A. C. L.; C. & O.; R. F. & P.; Seaboard; Southern.
Roanoke, Va.	Norfolk & W.; Virginian.
Rochester, N. Y.	B. & O.; Erie; I. V.; N. Y. C.; Penn.; West Shore.
Rockport, Mass.	Boston & Maine.
Rome, Ga.	Central of Ga.; N. C. & St. L.; Southern.
Rome, N. Y.	N. Y. Cent.; N. Y. O. & W.
Salisbury, N. C.	Southern.
Schenectady, N. Y.	D. & H.; N. Y. Cent.
Scranton, Pa.	Cent. of N. J.; D. & H.; D. L. & W.; Erie; N. Y. O. & W.
Shamokin, Pa.	Penna.; Reading.
Spartanburg, S. C.	Clinchfield; Southern; Piedmont & No.
Springfield, Mass.	B. & A.; B. & M.; N. Y. N. H. & H.
Statesville, N. C.	Southern.
Stroudsburg, Pa.	D. L. & W.; Penna.
Sunbury, Pa.	D. L. & W.; Penna.; Reading.
Syracuse, N. Y.	D. L. & W.; N. Y. Cent.; West Shore.
Taunton, Mass.	New Haven.
Trenton, N. J.	Penna.; Reading.
Troy, N. Y.	B. & M.; D. & H.; N. Y. Cent.
Utica, N. Y.	D. L. & W.; N. Y. Cent.; N. Y. O. & W.

Cities	Railways
Warren, Pa.	N. Y. Cent.; Penna.
Washington, D. C.	B. & O., C. & O.; Penna.; R. F. & P.; Southern.
Waterbury, Conn.	New Haven.
Watertown, N. Y.	N. Y. Cent.
Wilkes-Barre, Pa.	C. of N. J., D. & H.; Lehigh; Penna.
Williamsport, Pa.	N. Y. Cent.; Penna.; Reading.
Wilmington, Del.	B. & O.; Penna.; Reading.
Winchester, Va.	B. & O.; Penna.
Winston Salem, N. C.	N. & W.; Southern.
1762 Worcester, Mass.	B. & A.; B. & M.; New Haven.
York, Pa.	Penna.; Western Md.

EXHIBIT OF PRINCIPAL MOTOR COMMON CARRIERS OPERATING IN COMPETITION WITH ARROW CARRIER CORPORATION AND OTHER MOTOR COMMON CARRIERS COMPOSING A PART OF ASSOCIATED TRANSPORT, INC.

1484

MCLEAN TRUCKING CO., INC., ET AL.



CARRIERS OPERATING BETWEEN NEW YORK N.Y. (METROPOLITAN AREA)  
AND A TEN MILE RADIUS OF THE FOLLOWING TERMINAL POINTS

NEW  
YORK

ALBANY, N.Y.	4 7 10 13 16 19 22 25 28 31 34 37 40 43 46 49 52 55 58 61 64 67 70 73 76 79 82 85 88 91 94 97 100 103 106 109 112 115 118 121 124 127 130 133 136 139 142 145 148 151 154 157 160 163 166 169 172 175 178 181 184 187 190 193 196 199 202 205 208 211 214 217 220 223 226 229 232 235 238 241 244 247 250 253 256 259 262 265 268 271 274 277 280 283 286 289 292 295 298 301 304 307 310 313 316 319 322 325 328 331 334 337 340 343 346 349 352 355 358 361 364 367 370 373 376 379 382 385 388 391 394 397 400 403 406 409 412 415 418 421 424 427 430 433 436 439 442 445 448 451 454 457 460 463 466 469 472 475 478 481 484 487 490 493 496 499 502 505 508 511 514 517 520 523 526 529 532 535 538 541 544 547 550 553 556 559 562 565 568 571 574 577 580 583 586 589 592 595 598 601 604 607 610 613 616 619 622 625 628 631 634 637 640 643 646 649 652 655 658 661 664 667 670 673 676 679 682 685 688 691 694 697 699 702 705 708 711 714 717 720 723 726 729 732 735 738 741 744 747 750 753 756 759 762 765 768 771 774 777 780 783 786 789 792 795 798 801 804 807 810 813 816 819 822 825 828 831 834 837 840 843 846 849 852 855 858 861 864 867 870 873 876 879 882 885 888 891 894 897 899 902 905 908 911 914 917 920 923 926 929 932 935 938 941 944 947 950 953 956 959 962 965 968 971 974 977 980 983 986 989 992 995 998 1001 1004 1007 1010 1013 1016 1019 1022 1025 1028 1031 1034 1037 1040 1043 1046 1049 1052 1055 1058 1061 1064 1067 1070 1073 1076 1079 1082 1085 1088 1091 1094 1097 1099 1102 1105 1108 1111 1114 1117 1120 1123 1126 1129 1132 1135 1138 1141 1144 1147 1150 1153 1156 1159 1162 1165 1168 1171 1174 1177 1180 1183 1186 1189 1192 1195 1198 1201 1204 1207 1210 1213 1216 1219 1222 1225 1228 1231 1234 1237 1240 1243 1246 1249 1252 1255 1258 1261 1264 1267 1270 1273 1276 1279 1282 1285 1288 1291 1294 1297 1299 1302 1305 1308 1311 1314 1317 1320 1323 1326 1329 1332 1335 1338 1341 1344 1347 1350 1353 1356 1359 1362 1365 1368 1371 1374 1377 1380 1383 1386 1389 1392 1395 1398 1401 1404 1407 1410 1413 1416 1419 1422 1425 1428 1431 1434 1437 1440 1443 1446 1449 1452 1455 1458 1461 1464 1467 1470 1473 1476 1479 1482 1485 1488 1491 1494 1497 1499 1502 1505 1508 1511 1514 1517 1520 1523 1526 1529 1532 1535 1538 1541 1544 1547 1550 1553 1556 1559 1562 1565 1568 1571 1574 1577 1580 1583 1586 1589 1592 1595 1598 1601 1604 1607 1610 1613 1616 1619 1622 1625 1628 1631 1634 1637 1640 1643 1646 1649 1652 1655 1658 1661 1664 1667 1670 1673 1676 1679 1682 1685 1688 1691 1694 1697 1699 1702 1705 1708 1711 1714 1717 1720 1723 1726 1729 1732 1735 1738 1741 1744 1747 1750 1753 1756 1759 1762 1765 1768 1771 1774 1777 1780 1783 1786 1789 1792 1795 1798 1801 1804 1807 1810 1813 1816 1819 1822 1825 1828 1831 1834 1837 1840 1843 1846 1849 1852 1855 1858 1861 1864 1867 1870 1873 1876 1879 1882 1885 1888 1891 1894 1897 1899 1902 1905 1908 1911 1914 1917 1920 1923 1926 1929 1932 1935 1938 1941 1944 1947 1950 1953 1956 1959 1962 1965 1968 1971 1974 1977 1980 1983 1986 1989 1992 1995 1998 2001 2004 2007 2010 2013 2016 2019 2022 2025 2028 2031 2034 2037 2040 2043 2046 2049 2052 2055 2058 2061 2064 2067 2070 2073 2076 2079 2082 2085 2088 2091 2094 2097 2099 2102 2105 2108 2111 2114 2117 2120 2123 2126 2129 2132 2135 2138 2141 2144 2147 2150 2153 2156 2159 2162 2165 2168 2171 2174 2177 2180 2183 2186 2189 2192 2195 2198 2201 2204 2207 2210 2213 2216 2219 2222 2225 2228 2231 2234 2237 2240 2243 2246 2249 2252 2255 2258 2261 2264 2267 2270 2273 2276 2279 2282 2285 2288 2291 2294 2297 2299 2302 2305 2308 2311 2314 2317 2320 2323 2326 2329 2332 2335 2338 2341 2344 2347 2350 2353 2356 2359 2362 2365 2368 2371 2374 2377 2380 2383 2386 2389 2392 2395 2398 2401 2404 2407 2410 2413 2416 2419 2422 2425 2428 2431 2434 2437 2440 2443 2446 2449 2452 2455 2458 2461 2464 2467 2470 2473 2476 2479 2482 2485 2488 2491 2494 2497 2499 2502 2505 2508 2511 2514 2517 2520 2523 2526 2529 2532 2535 2538 2541 2544 2547 2550 2553 2556 2559 2562 2565 2568 2571 2574 2577 2580 2583 2586 2589 2592 2595 2598 2601 2604 2607 2610 2613 2616 2619 2622 2625 2628 2631 2634 2637 2640 2643 2646 2649 2652 2655 2658 2661 2664 2667 2670 2673 2676 2679 2682 2685 2688 2691 2694 2697 2699 2702 2705 2708 2711 2714 2717 2720 2723 2726 2729 2732 2735 2738 2741 2744 2747 2750 2753 2756 2759 2762 2765 2768 2771 2774 2777 2780 2783 2786 2789 2792 2795 2798 2801 2804 2807 2810 2813 2816 2819 2822 2825 2828 2831 2834 2837 2840 2843 2846 2849 2852 2855 2858 2861 2864 2867 2870 2873 2876 2879 2882 2885 2888 2891 2894 2897 2899 2902 2905 2908 2911 2914 2917 2920 2923 2926 2929 2932 2935 2938 2941 2944 2947 2950 2953 2956 2959 2962 2965 2968 2971 2974 2977 2980 2983 2986 2989 2992 2995 2998 3001 3004 3007 3010 3013 3016 3019 3022 3025 3028 3031 3034 3037 3040 3043 3046 3049 3052 3055 3058 3061 3064 3067 3070 3073 3076 3079 3082 3085 3088 3091 3094 3097 3099 3102 3105 3108 3111 3114 3117 3120 3123 3126 3129 3132 3135 3138 3141 3144 3147 3150 3153 3156 3159 3162 3165 3168 3171 3174 3177 3180 3183 3186 3189 3192 3195 3198 3201 3204 3207 3210 3213 3216 3219 3222 3225 3228 3231 3234 3237 3240 3243 3246 3249 3252 3255 3258 3261 3264 3267 3270 3273 3276 3279 3282 3285 3288 3291 3294 3297 3299 3302 3305 3308 3311 3314 3317 3320 3323 3326 3329 3332 3335 3338 3341 3344 3347 3350 3353 3356 3359 3362 3365 3368 3371 3374 3377 3380 3383 3386 3389 3392 3395 3398 3401 3404 3407 3410 3413 3416 3419 3422 3425 3428 3431 3434 3437 3440 3443 3446 3449 3452 3455 3458 3461 3464 3467 3470 3473 3476 3479 3482 3485 3488 3491 3494 3497 3499 3502 3505 3508 3511 3514 3517 3520 3523 3526 3529 3532 3535 3538 3541 3544 3547 3550 3553 3556 3559 3562 3565 3568 3571 3574 3577 3580 3583 3586 3589 3592 3595 3598 3601 3604 3607 3610 3613 3616 3619 3622 3625 3628 3631 3634 3637 3640 3643 3646 3649 3652 3655 3658 3661 3664 3667 3670 3673 3676 3679 3682 3685 3688 3691 3694 3697 3699 3702 3705 3708 3711 3714 3717 3720 3723 3726 3729 3732 3735 3738 3741 3744 3747 3750 3753 3756 3759 3762 3765 3768 3771 3774 3777 3780 3783 3786 3789 3792 3795 3798 3801 3804 3807 3810 3813 3816 3819 3822 3825 3828 3831 3834 3837 3840 3843 3846 3849 3852 3855 3858 3861 3864 3867 3870 3873 3876 3879 3882 3885 3888 3891 3894 3897 3899 3902 3905 3908 3911 3914 3917 3920 3923 3926 3929 3932 3935 3938 3941 3944 3947 3950 3953 3956 3959 3962 3965 3968 3971 3974 3977 3980 3983 3986 3989 3992 3995 3998 4001 4004 4007 4010 4013 4016 4019 4022 4025 4028 4031 4034 4037 4040 4043 4046 4049 4052 4055 4058 4061 4064 4067 4070 4073 4076 4079 4082 4085 4088 4091 4094 4097 4099 4102 4105 4108 4111 4114 4117 4120 4123 4126 4129 4132 4135 4138 4141 4144 4147 4150 4153 4156 4159 4162 4165 4168 4171 4174 4177 4180 4183 4186 4189 4192 4195 4198 4201 4204 4207 4210 4213 4216 4219 4222 4225 4228 4231 4234 4237 4240 4243 4246 4249 4252 4255 4258 4261 4264 4267 4270 4273 4276 4279 4282 4285 4288 4291 4294 4297 4299 4302 4305 4308 4311 4314 4317 4320 4323 4326 4329 4332 4335 4338 4341 4344 4347 4350 4353 4356 4359 4362 4365 4368 4371 4374 4377 4380 4383 4386 4389 4392 4395 4398 4401 4404 4407 4410 4413 4416 4419 4422 4425 4428 4431 4434 4437 4440 4443 4446 4449 4452 4455 4458 4461 4464 4467 4470 4473 4476 4479 4482 4485 4488 4491 4494 4497 4499 4502 4505 4508 4511 4514 4517 4520 4523 4526 4529 4532 4535 4538 4541 4544 4547 4550 4553 4556 4559 4562 4565 4568 4571 4574 4577 4580 4583 4586 4589 4592 4595 4598 4601 4604 4607 4610 4613 4616 4619 4622 4625 4628 4631 4634 4637 4640 4643 4646 4649 4652 4655 4658 4661 4664 4667 4670 4673 4676 4679 4682 4685 4688 4691 4694 4697 4699 4702 4705 4708 4711 4714 4717 4720 4723 4726 4729 4732 4735 4738 4741 4744 4747 4750 4753 4756 4759 4762 4765 4768 4771 4774 4777 4780 4783 4786 4789 4792 4795 4798 4801 4804 4807 4810 4813 4816 4819 4822 4825 4828 4831 4834 4837 4840 4843 4846 4849 4852 4855 4858 4861 4864 4867 4870 4873 4876 4879 4882 4885 4888 4891 4894 4897 4899 4902 4905 4908 4911 4914 4917 4920 4923 4926 4929 4932 4935 4938 4941 4944 4947 4950 4953 4956 4959 4962 4965 4968 4971 4974 4977 4980 4983 4986 4989 4992 4995 4998 5001 5004 5007 5010 5013 5016 5019 5022 5025 5028 5031 5034 5037 5040 5043 5046 5049 5052 5055 5058 5061 5064 5067 5070 5073 5076 5079 5082 5085 5088 5091 5094 5097 5099 5102 5105 5108 5111 5114 5117 5120 5123 5126 5129 5132 5135 5138 5141 5144 5147 5150 5153 5156 5159 5162 5165 5168 5171 5174 5177 5180 5183 5186 5189 5192 5195 5198 5201 5204 5207 5210 5213 5216 5219 5222 5225 5228 5231 5234 5237 5240 5243 5246 5249 5252 5255 5258 5261 5264 5267 5270 5273 5276 5279 5282 5285 5288 5291 5294 5297 5299 5302 5305 5308 5311 5314 5317 5320 5323 5326 5329 5332 5335 5338 5341 5344 5347 5350 5353 5356 5359 5362 5365 5368 5371 5374 5377 5380 5383 5386 5389 5392 5395 5398 5401 5404 5407 5410 5413 5416 5419 5422 5425 5428 5431 5434 5437 5440 5443 5446 5449 5452 5455 5458 5461 5464 5467 5470 5473 5476 5479 5482 5485 5488 5491 5494 5497 5499 5502 5505 5508 5511 5514 5517 5520 5523 5526 5529 5532 5535 5538 5541 5544 5547 5550 5553 5556 5559 5562 5565 5568 5571 5574 5577 5580 5583 5586 5589 5592 5595 5598 5601 5604 5607 5610 5613 5616 5619 5622 5625 5628 5631 5634 5637 5640 5643 5646 5649 5652 5655 5658 5661 5664 5667 5670 5673 5676 5679 5682 5685 5688 5691 5694 5697 5699 5702 5705 5708 5711 5714 5717 5720 5723 5726 5729 5732 5735 5738 5741 5744 5747 5750 5753 5756 5759 5762 5765 5768 5771 5774 5777 5780 5783 5786 5789 5792 5795 5798 5801 5804 5807 5810 5813 5816 5819 5822 5825 5828 5831 5834 5837 5840 5843 5846 5849 5852 5855 5858 5861 5864 5867 5870 5873 5876 5879 5882 5885 5888 5891 5894 5897 5899 5902 5905 5908 5911 5914 5917 5920 5923 5926 5929 5932 5935 5938 5941 5944 5947 5950 5953 5956 5959 5962 5965 5968 5971 5974 5977 5980 5983 5986 5989 5992 5995 5998 6001 6004 6007 6010 6013 6016 6019 6022 6025 6028 6031 6034 6037 6040 6043 6046 6049 6052 6055 6058 6061 6064 6067 6070 6073 6076 6079 6082 6085 6088 6091 6094 6097 6099 6102 6105 6108 6111 6114 6117 6120 6123 6126 6129 6132 6135 6138 6141 6144 6147 6150 6153 6156 6159 6162 6165 6168 6171 6174 6177 6180 6183 6186 6189 6192 6195 6198 6201 6204 6207 6210 6213 6216 6219 6222 6225 6228 6231 6234 6237 6240 6243 6246 6249 6252 6255 6258 6261 6264 6267 6270 6273 6276 6279 6282 6285 6288 6291 6294 6297 6299 6302 6305 6308 6311 6314 6317 6320 6323 6326 6329 6332 6335 6338 6341 6344 6347 6350 6353 6356 6359 6362 6365 6368 6371 6374 6377 6380 6383 6386 6389 6392 6395 6398 6401 6404 6407 6410 6413 6416 6419 6422 6425 6428 6431 6434 6437 6440 6443 6446 6449 6452 6455 6458 6461 6464 6467 6470 6473 6476 6479 6482 6485 6488 6491 6494 6497 6499 6502 6505 6508 6511 6514 6517 6520 6523 6526 6529 6532 6535 6538 6541 6544 6547 6550 6553 6556 6559 6562 6565 6568 6571 6574 6577 6580 6583 6586 6589 6592 6595 6598 6601 6604 6607 6610 6613 6616 6619 6622 6625 6628 6631 6634 6637 6640 6643 6646 6649 6652 6655 6658 6661 6664 6667 6670 6673 6676 6679 6682 6685 6688 6691 6694 6697 6699 6702 6705 6708 6711 6714 6717 6720 6723 6726 6729 6732 6735 6738 6741 6744 6747 6750 6753 6756 6759 6762 6765 6768 6771 6774 6777 6780 6783 6786 6789 6792 6795 6798 6801 6804 6807 6810 6813 6816 6819 6822 6825 6828 6831 6834 6837 6840 6843 6846 6849 6852 6855 6858 6861 6864 6867 6870 6873 6876 6879 6882 6885 6888 6891 6894 6897 6899 6902 6905 6908 6911 6914 6917 6920 6923 6926 6929 6932 6935 6938 6941 6944 6947 6950 6953 6956 6959 6962 6965 6968 6971 6974 6977 6980 6983 6986 6989 6992 6995 6998 7001 7004 7007 7010 7013 7016 7019 7022 7025 7028 7031 7034 7037 7040 7043 7046 7049 7052 7055 7058 7061 7064 7067 7070 7073 7076 7079 7082 7085 7088 7091 7094 7097 7099 7102 7105 7108 7111 7114 7117 7120 7123 7126 7129 7132 7135 7138 7141 7144 7147 7150 7153 7156 7159 7162 7165 7168 7171 7174 7177 7180 7183 7186 7189 7192 7195 7198 7201 7204 7207 7210 7213 7216 7219 7222 7225 7228 7231 7234 7237 7240 7243 7246 7249 7252 7255 7258 7261 7264 7267 7270 7273 7276 7279 7282 7285 7288 7291 7294 7297 7299 7302 7305 7308 7311 7314 7317 7320 7323 7326 7329 7332 7335 7338 7341 7344 7347 7350 7353 7356 7359 7362 7365 7368 7371 7374 7377 7380 7383 7386 7389 7392 7395 7398 7401 7404 7407 7410 7413 7416 7419 7422 7425 7428 7431 7434 7437 7440 7443 7446 7449 7452 7455 7458 7461 7464 7467 7470 7473 747
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1776	Carrier	Class	Name of line	Address
1	A	A	Allentown-Bangor Motor Transfer	Bethlehem, Pa.
2	A	A	Allentown-Eastern Motor Express	Allentown, Pa.
3	A	A	Alto Trucking Company	West Hazleton, Pa.
4	B	A	American Carrier System	Newark, N. J.
5	B	A	American Freight Dispatch	Newark, N. J.
6	A	A	Auto Express	Scranton, Pa.
7	B	A	Academy Storage & Warehouse Co.	Newark, N. J.
8	A	A	Atlantic Transfer	Boyetown, Pa.
9	A	A	Anthracite Trucking Company	Scranton, Pa.
10	B	A	American Transport Corporation	Keamy, N. J.
11	A	A	B. & H. Transfer	Lehigh, Pa.
12	A	A	Bast, D. F.	Allentown, Pa.
13	A	A	Bill's Express	Binghamton, N. Y.
14	A	A	Binghamton Motor Express Company	Reading, Pa.
15	A	A	Black Diamond Fast Mtr. Freight	Dunmore, Pa.
16	B	A	Bolus Motor Lines	Scranton, Pa.
17	A	A	Boushell Carrier Company	Stroudsburg, Pa.
18	A	A	Branch Motor Express	New York, N. Y.
19	A	A	Buch, A. I. Express	Harrisburg, Pa.
20	B	A	Beach Transportation Company	New York, N. Y.
21	A	A	Brown, Sam.	Jersey Shore, Pa.
22	B	A	B & Z Express Company	West New York, N. J.
23	A	A	Barbuz, Anthony	Reading, Pa.
24	B	A	Brown, Geo. W.	New York, N. Y.
25	A	A	Binghamton Warehouse & Terminal	Binghamton, N. Y.
26	A	A	Canny Trucking Company	Binghamton, N. Y.
27	B	A	Cardinale Trucking Company	Whippany, N. J.
28	A	A	Condon's Express	Paterson, N. J.
29	A	A	Crown Motor Freight Company	Paterson, N. J.
30	A	A	Clark, M. A.	State College, Pa.
31	A	A	Central Storage & Transfer Co.	Harrisburg, Pa.
32	B	A	Cole's Trucking Service	Athens, Pa.
33	B	A	Crebbs, Paul	Northumberland, Pa.
34	B	A	Coilum Trucking Company	Jersey City, N. J.
35	A	A	Daley's Blue Line Transfer	Wilkes-Barre, Pa.
36	B	A	Duckworth, Asa Company	Newark, N. J.
37	B	A	Delaware Transportation Company	Belvidere, N. J.
38	B	A	Delaware Valley Transp. Company	Oxford, N. J.
39	B	A	Diebold, Theodore	Newark, N. J.
40	A	A	Eastern Carrier Corporation	Dunmore, Pa.
41	B	A	Essex Warehouse Company	Newark, N. J.
42	A	A	Eastern Motor Freight Company	Pittsburgh, Pa.
43	A	A	Fast Trucking Company	Newark, N. J.
44	A	A	Flanders Motor Express	Flanders, N. J.
45	A	A	Follmer Trucking Company	Danville, Pa.
46	A	A	Fowler & Williams	Scranton, Pa.
47	A	A	Frey, Peter J.	Allentown, Pa.
48	A	A	Frey's Motor Express	Phillipsburg, N. J.
49	A	A	Friedman's Express, Inc.	Wilkes-Barre, Pa.
50	B	A	Funston & Son	Muncy, Pa.
51	B	A	Frantz, A. M.	Muncy, Pa.
52	B	A	W. T. Fletcher & Son	Newark, N. J.
53	B	A	Forbes Company	Belleville, N. J.
54	B	A	Fry & Powell	Spring City, Pa.
55	A	A	Gillette Motor Express	Honesdale, Pa.
56	B	A	Garford Trucking Company	South River, N. J.
57	A	A	Glucks Motor Express	Pottsville, Pa.
58	A	A	Goble, H. L. Company	Great Meadows, N. J.
59	A	A	Gregg's Motor Lines	Scranton, Pa.
60	A	A	German, Amundus S.	Allentown, Pa.
61	B	A	Geroulo Brothers	Allentown, Pa.
62	B	A	Good, Earl R.	Lancaster, Pa.
63	A	A	Gillespie, H. L.	Honesdale, Pa.
64	A	A	Hall's Motor Transit Company	Sanbury, Pa.
65	B	A	Harman & Myers Express	Montgomery, Pa.
66	A	A	Hartence, Orville	Easton, Pa.
67	A	A	Hemming's Express	Long Valley, N. J.
68	A	A	Horbacher Delivery Service	Philadelphia, Pa.
69	B	A	Heffelfinger Freight Lines	Myerstown, Pa.
70	A	A	Hall's Fast Motor Freight	Plainfield, N. J.
71	A	A	Hartmans-Lebanon Transfer	Stellton, Pa.
72	B	A	Helm New York & Pittsburgh Express	Newark, N. J.
73	B	A	Hicks Brothers	Belvidere, N. J.
74	B	A	Highway Freight	Jersey City, N. J.
75	A	A	Hochman Motor Express	Terre Hill, Pa.
76	B	A	Hoffman Motor Transportation Company	Harrisburg, N. J.
77	B	A	International Motor Freight	Paterson, N. J.
78	B	A	Interboro Trucking Company	Perth Amboy, N. J.

Carrier	Class	Name of line	Address
79	B	Interstate Magazine Hauling Corporation	New York, N. Y.
80	A	Interstate Dress Carriers	New York, N. Y.
81	A	Interstate Motor Freight System	Detroit, Mich.
82	A	Jones Motor Company	Spring City, Pa.
83	A	Karns Transfer, Inc.	Hazleton, Pa.
84	A	Keeshin Motor Express	Chicago, Ill.
85	A	Keystone Express & Storage Company	Lancaster, Pa.
86	A	Kuhn's Transfer, Inc.	Wilkes-Barre, Pa.
1769 87	B	Lakeland Express	Dover, N. J.
88	A	Lancaster Transportation Company	Lancaster, Pa.
89	B	Laubach, M. K. Transp. Company	Phillipsburg, N. J.
90	A	Lehigh Valley Transit Co., Company	Allentown, Pa.
91	A	Lehigh Valley Transp. Company	Allentown, Pa.
92	A	Leibensperger, A. C. Mtr. Express	Allentown, Pa.
93	A	Libe, E. B. Auto Transfer	Phillipsburg, N. J.
94	B	Lobb, Wm. J.	Pen Argyll, Pa.
95	B	Langer Transportation Corp.	Newark, N. J.
96	A	Lansdale-New York Mtr. Express	Lansdale, Pa.
97	B	Lehigh Transportation Company	Newark, N. J.
98	B	Lock Haven Transfer Company	Lock Haven, Pa.
99	A	Lancaster-New York Motor Express	Lancaster, Pa.
100	A	McFadden Freight Lines	Allentown, Pa.
101	B	McCollough, Wm. Transp. Company	E. Rutherford, N. J.
102	B	McPeak, P. J.	Scranton, Pa.
103	A	Modern Transfer Company	Allentown, Pa.
104	A	Motor Freight Express Company	York, Pa.
105	B	Middle Atlantic Transp. Company	New York, N. Y.
106	B	Madison Transportation Company	Kearny, N. J.
107	B	Miller's Motor Freight Service	York, Pa.
108	B	Monarch Motor Freight Lines	Newark, N. J.
109	B	Moore's Trucking Company	Plainfield, N. J.
110	A	Moyer, Chas. C.	Wilkes-Barre, Pa.
111	A	Nestor Brothers	Endicott, N. Y.
112	A	New Pennsylvania Mtr. Express	Lebanon, Pa.
113	A	New York & Pennsylvania Mtr. Exp.	Reading, Pa.
114	B	N. J. Forwarding Company	Newark, N. J.
115	B	National Trucking Company	Kearny, N. J.
116	B	Oneida Motor Frt. Service	New York, N. Y.
117	A	Ovens Transfer	Scranton, Pa.
118	A	Perkiomen Transfer	Pennsburg, Pa.
119	A	Post, R. F.	Scranton, Pa.
120	B	Preston Trucking Company	Baltimore, Md.
121	A	Reilly's Auto Transfer	Phillipsburg, N. J.
122	A	Rhinevault Trucking Company	Endicott, N. Y.
123	A	Richards Motor Frt. Lines	Scranton, Pa.
124	A	Rodgers Motor Lines	Scranton, Pa.
125	A	Reading Transportation Company	Philadelphia, Pa.
126	B	Reisch Trucking Company	Palisades Park, N. J.
127	A	Reliable Transfer of York	York, Pa.
128	B	Roberts, Allen T.	Walnutport, Pa.
129	B	Shober, Henry B.	Easton, Pa.
130	A	Speedway Carriers	Pottsville, Pa.
131	B	Schreiber Trucking, Inc.	Pittsburgh, Pa.
132	B	Shipper's Forwarding Company	Akron, Ohio.
1770 133	A	Silver Lines	New York, N. Y.
134	B	Smith & Solomon	New Brunswick, N. J.
135	B	Standard Motor Freight, Inc.	Pittsburgh, Pa.
136	B	Shenandoah Motor Freight	Shenandoah, Pa.
137	A	Spina, Antonio	Reading, Pa.
138	B	Stefanile Transportation Company	New York, N. Y.
139	A	Valetta Motor Trucking Company	Endicott, N. Y.
140	B	Voynton Brothers	Wilkes-Barre, Pa.
141	B	West Motor Freight	Bovertown, Pa.
142	B	Williamsport Trucking Service	Williamsport, Pa.
143	B	Weinmar Storage Company	Elizabeth, N. J.
144	B	Whinney's Express	Philadelphia, Pa.
145	A	White Line Express	Scranton, Pa.
146	B	White's Express	Bloomfield, N. J.
147	A	York Motor Express Company	York, Pa.
148	A	Zeafloss Transfer Company	Hazleton, Pa.

A—Known active competitors.

B—Competitors possessing operating rights but whose activities are irregular, or may not exercise them.

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## Exhibit 20

Before the Interstate Commerce Commission

Re Application of Associated Transport, Inc. for Acquisition of Control of Certain Motor Carriers and for the Consolidation Thereof.

Witness COCHRAN.

LIST OF CLASS I COMMON CARRIERS OF GENERAL COMMODITIES MAINTAINING SERVICE BETWEEN REPRESENTATIVE POINTS AS INDICATED WITHIN THE SAME AREA AS SERVED BY CONSOLIDATED MOTOR LINES, INCORPORATED, AND MCCARTHY FREIGHT SYSTEMS, INCORPORATED

Name of carriers	Total operating revenue for year 1940 (see footnote)	Between Boston and—							
		North Adams, Mass.	Springfield, Mass.	Providence, R. I.	New London, Conn.	Hartford, Conn.	New Haven, Conn.	New York City	Albany, N. Y.
A. B. & C. Motor Trans. Co., Inc.	\$407,224	x	x	x	x	x	x	x	x
Adley Express Co., Inc.	1,750,033	x	x	x	x	x	x	x	x
Akers Motor Lines	925,740	x	x	x	x	x	x	x	x
B & F Transportation Co.	201,381	x	x	x	x	x	x	x	x
Bay State Motor Express Co.	144,011	x	x	x	x	x	x	x	x
Boston & Springfield Despatch	134,515	x	x	x	x	x	x	x	x
C. Bowen, Inc.	119,822	x	x	x	x	x	x	x	x
Burgess Express Company	381,472								
Capitol Motor Trans. Co., Inc.	431,767	x	x	x	x	x	x	x	x
D & N Motor Transportation	291,747	x	x	x	x	x	x	x	x
Darcey Transportation Co.	356,713	x	x	x	x	x	x	x	x
Emmott Valley Transportation	305,265	x	x	x	x	x	x	x	x
Garford Trucking Company	360,610								
Gay's Express, Inc.	773,828	x	x	x	x	x	x	x	x
Hartford Despatch & Whse. Co.	204,300	x	x	x	x	x	x	x	x
Hemingway Bros. Inter. Trk. Co.	581,968	x	x	x	x	x	x	x	x
Highway Express Company	231,645	x	x	x	x	x	x	x	x
Holmes Trans. Company	345,321	x	x	x	x	x	x	x	x
Huckins & Company	137,178	x	x	x	x	x	x	x	x
E. J. Kelley Company	178,931	x	x	x	x	x	x	x	x
Laube Interstate Trucking Co.	181,618	x	x	x	x	x	x	x	x
Liberty Motor Freight Lines	1,918,336	x	x	x	x	x	x	x	x
M & R Transportation Co.	353,320	x	x	x	x	x	x	x	x
McCullough Trans. Co., Wm.	769,456	x	x	x	x	x	x	x	x
Malkin Motor Freight Co.	123,558	x	x	x	x	x	x	x	x
New England Carrier Corp.	321,655	x	x	x	x	x	x	x	x
New England Transportation Co.	1,575,419	x	x	x	x	x	x	x	x
New York & Worcester Despatch	133,096	x	x	x	x	x	x	x	x
Preston Trucking Company	442,328	x	x	x	x	x	x	x	x
Seaboard Freight Lines	1,725,263	x	x	x	x	x	x	x	x
H. T. Smith Express Company	334,801	x	x	x	x	x	x	x	x
Sommers Motor Lines	217,731	x	x	x	x	x	x	x	x
Textile Motor Express, Inc.	215,777	x	x	x	x	x	x	x	x
United Transportation Co. of R. I.	123,468	x	x	x	x	x	x	x	x
Watt Brothers	239,852	x	x	x	x	x	x	x	x
Wooster Express	267,437	x	x	x	x	x	x	x	x
Boston & Taunton Trans. Co.	182,136	x	x	x	x	x	x	x	x
H. B. Church Truck Service Co.	275,211	x	x	x	x	x	x	x	x

Name of carriers	Total operating revenue for year 1940 (see footnote)	Between Boston and—								
		North Adams, Mass.	Springfield, Mass.	Providence, R. I.	New London, Conn.	Hartford, Conn.	New Haven, Conn.	New York City.	Albany, N. Y.	Philadelphia, Pa.
1772 Joe. L. Coyle	\$362,840	x	x	x				x	x	x
Imperial Freight Lines	149,854	x	x			x			x	x
Henry Jenkins Trans. Co., Inc.	387,913	x	x	x	x			x		x
Moulton & Holmes	198,270	x	x	x						x
Modern Trans.	277,411	x	x	x					x	x
Frank J. Cole	132,884	x	x							
Jones Motor Company	182,580		x		x					
Keogh Storage Company	183,631		x	x	x	x				
Benjamin Motor Express, Inc.	231,476		x	x				x		
City Truck Company, Inc.	257,111		x	x						
Onopdaga Freight Corp.	438,301		x					x	x	
Andrews & Pierce, Inc.	113,852			x						
Lowell Trucking Corp.	202,340							x		
St. Johnsbury Trucking Co.	606,760			x						
Old Colony Forwarding Corp.	729,896							x		
Shawmut Transportation Co.	392,296							x	x	
Stones Express	617,339							x	x	
Wilson Freight Forwarding Co.	559,156							x	x	
M & M Transportation Co.	1,461,310		x	x	x	x	x	x	x	x
H. P. Welch Company	492,312			x				x		x
Total 1940 operating revenues of carriers serving routes as indicated	\$25,641,425	\$7,755,369	19,305,102	20,409,477	16,229,272	18,476,183	18,667,856	18,805,837	10,312,350	11,901,652
Total number of carriers serving each route		18	42	45	30	37	37	36	18	16
Consolidated Motor Lines, Inc.	\$4,535,111	x	x	x	x	x	x	x	x	x
McCarthy Freight System, Inc.	1,901,634	x	x	x	x	x	x	x	x	x
Total 1940 operating revenue	6,436,745									

FOOTNOTE.—(a) Annual operating revenues are set forth to furnish an index as to the size of such carriers, and thus to indicate the relative strength of the competition afforded by them. (b) Operating revenue data was obtained from Quarterly Reports of Revenues, Expenses, and Statistics as submitted to the Interstate Commerce Commission.

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*Exhibit No. 22*

Dockets MC-F-1612, 1613

Witness F. E. Perquist.

COMPILATION OF GROSS INTERCITY REVENUES OF CLASS I CARRIERS  
INCLUDED IN APPLICANT'S EXHIBIT #2

The Mason & Dixon Lines, Inc.	\$1,917,844.18
Brooks Transportation Company	1,347,225.45
Great Southern Trucking Co.	1,330,206.30
Roadway Express, Inc.	1,223,981.55
Akers Motor Lines, Inc.	911,749.16
Atlantic States Motor Lines, Inc.	726,851.48
Horlacher Delivery Service, Inc.	689,259.18
Novick Transfer Co.	683,425.84
Rutherford Freight Lines Incorporated	681,919.59
New South Express Lines, Inc.	639,914.43
Baltimore Transfer Company of Baltimore City	639,910.73
E. T. & W. N. C. Motor Transportation Co.	625,919.51
Overnight Motor Transportation Co.	588,830.05
The Transport Corporation of Virginia	558,461.39
Harris Brothers Transfer Co.	503,696.68
Mundy Motor Lines	486,892.00
Super Service Motor Freight Company	483,892.33
Miller Motor Express Co.	461,546.13
Preston Trucking Co., Inc.	442,208.76
Central Motor Lines Inc.	400,096.39
Carolina Freight Carriers Corporation	385,254.75
A. A. A. Highway Express Inc.	345,144.08
Lewis & Holmes Motor Freight Corp.	324,708.77
Frederickson Motor Express Corp.	314,638.16
Smith's Transfer Corporation	269,704.60
Colonial Motor Freight Line	258,981.56
Atlantic Coast Freight Lines, Inc.	254,352.18
East Coast Freight Lines, Inc.	250,144.92
Tidewater Express Lines, Inc.	249,506.92
Jack Cole Company, Inc.	239,838.49
Motor Transit Co.	237,967.41
Howard Hall Co., Inc.	222,012.97
B. C. Motor Lines Inc.	228,803.30
Cockrane Transportation Company	163,303.80
Thurston Motor Lines	150,115.00
Red Line, Inc.	150,682.01
The Vance Trucking Co., Inc.	116,192.33

<sup>1</sup> Also \$101,685 on contract.

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MCLEAN TRUCKING CO., INC., ET AL.

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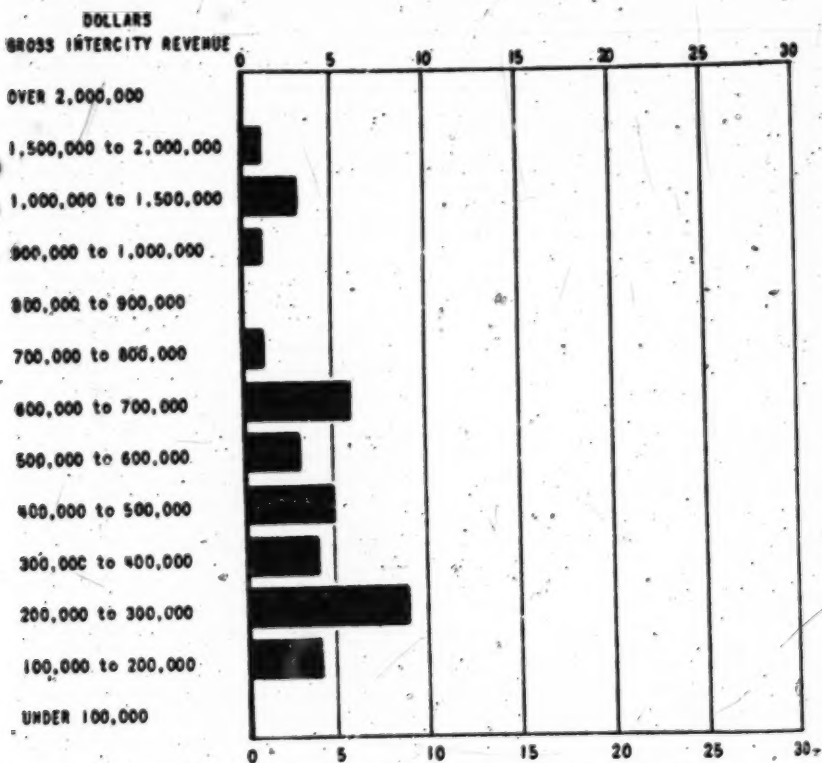
DOCKETS MC F 1612, 1613

EXHIBIT NO.

WITNESS: F. E. BERQUIST

GROUPING OF CLASS I CARRIERS BY SIZE OF GROSS REVENUE  
1940

(APPLICANTS EXHIBIT NO. 2)



Source: Annual Reports to Interstate Commerce Commission by carriers.

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## Exhibit No. 23

Dockets MC-F-1612, 1613

Witness F. E. Berquist.

COMPILATION OF GROSS INTERCITY REVENUES OF CLASS I CARRIERS  
INCLUDED IN APPLICANT'S EXHIBIT NO. 3

Liberty Motor Freight Lines, Inc.	\$1,918,336.88
Adley Express Co.	1,748,640.96
Seaboard Freight Lines, Inc.	1,724,851.22
New England Transportation Company	1,464,586.00
M & M Transportation Co.	1,460,871.27
A. Towle Company	824,011.51
Gay's Express, Inc.	773,789.63
Old Colony Forwarding Corp.	729,896.19
Stones Express, Inc.	604,584.29
Hemingway Brothers Interstate Trucking Co.	581,991.39
St. Johnsbury Trucking Co.	572,621.48
Capitol Motor Transportation Co., Inc.	431,767.24
A. B. & C. Motor Transportation Co., Inc.	407,224.24
H. P. Welch Co.	393,850.31
Shawmut Transportation Co., Inc.	391,296.14
Burgess Express Co., Inc.	380,707.37
McFarland & Stampel Trucking Company	371,533.49
Wm. McCrillough Transportation Co., Inc.	364,732.68
National Transportation Co., Inc.	363,199.80
M. & R. Transportation Co., Inc.	353,320.18
Henry Jenkins Transportation Co., Inc.	351,471.76
Holmes Transportation Service	345,321.13
The H. T. Smith Express Co.	334,891.83
Darcey Transportation Co., Inc.	328,052.83
Lombard Bros., Incorporated	320,425.69
J. Coyle	315,097.25
Emmott Valley Transportation Co.	305,285.89
D. & N. Motor Transportation Co.	291,747.00
Harrison Motor Freight	291,500.13
New England Carrier Corp.	286,655.07
H. B. Church Truck Service Co.	274,910.13
P. B. Nutrie Motor Transportation, Inc.	270,588.32
Worcester Express, Inc.	267,432.47
Beacon Fast Freight Co., Inc.	252,124.36
H. C. Roulston, Inc.	250,904.86
Highway Express Co.	231,645.61
Benjamin Motor Express, Inc.	231,476.48
Watt Brothers	229,837.60
Connecticut Motor Lines, Inc.	218,062.25
Sommers Motor Lines, Inc.	217,713.31
Textile Motor Express, Inc.	212,432.47
Newburgh Transfer, Inc.	203,633.48
Laskas Motor Lines, Inc.	203,316.17
Lowell Trucking Corp.	202,340.21
B. & E. Transportation Co., Inc.	201,381.48
1777 C. Rickard & Sons, Inc.	198,287.07
Moulton & Holmes	198,270.26
Hartford Despatch & Warehouse Co., Inc.	193,738.00
White Line Motor Express	192,167.85

Laramie's Transit, Inc.	\$191,383.28
Interstate Magazine Hauling Corp.	185,883.11
Keogh Storage Company	183,680.40
Crowe & Co., Inc.	183,500.75
Boston & Taunton Transportation Co.	182,135.54
Laube Interstate Corp.	181,618.69
Perrett & Glenney, Inc.	178,627.98
City Truck Co., Inc.	174,741.87
The E. J. Kelly Co.	167,708.66
Goodman's New York and Connecticut Express	167,193.20
Oates Bros., Inc.	165,503.91
Nemasket Transportation Co., Inc.	157,813.33
Imperial Freight Lines	149,722.90
Kimballs Motor Dispatch, Inc.	148,647.71
Bay State Motor Express Co.	144,011.21
Brown & Pollock Motor Lines	139,435.36
Huckins & Co., Inc.	137,178.74
N. Y. & Worcester Dispatch Co., Inc.	133,741.48
Frank J. Cole, Inc.	132,884.54
Molkin Motor Freight Co.	123,558.05
United Transportation Co. of Rhode Island	123,468.20
O. Brown, Inc.	119,822.01
Andrews & Pierce, Inc.	95,510.53
Puritan Freight Lines, Inc.	72,406.96

Source: Annual Reports by Carriers to the Interstate Commerce Commission 1940.

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DOCKETS NO. F 1612, 1613

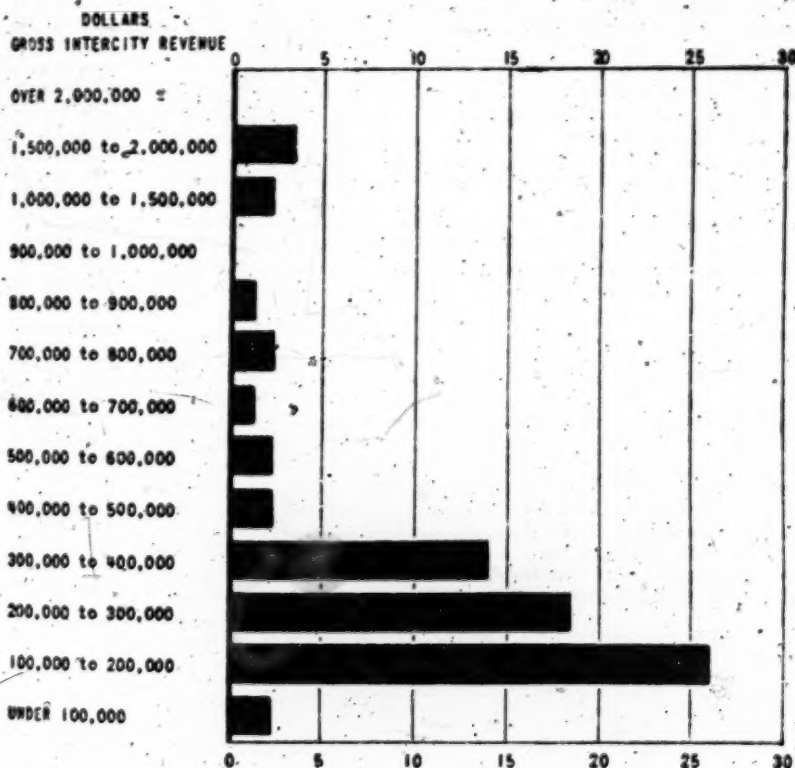
EXHIBIT NO.

WITNESS: F. E. BERGLIST

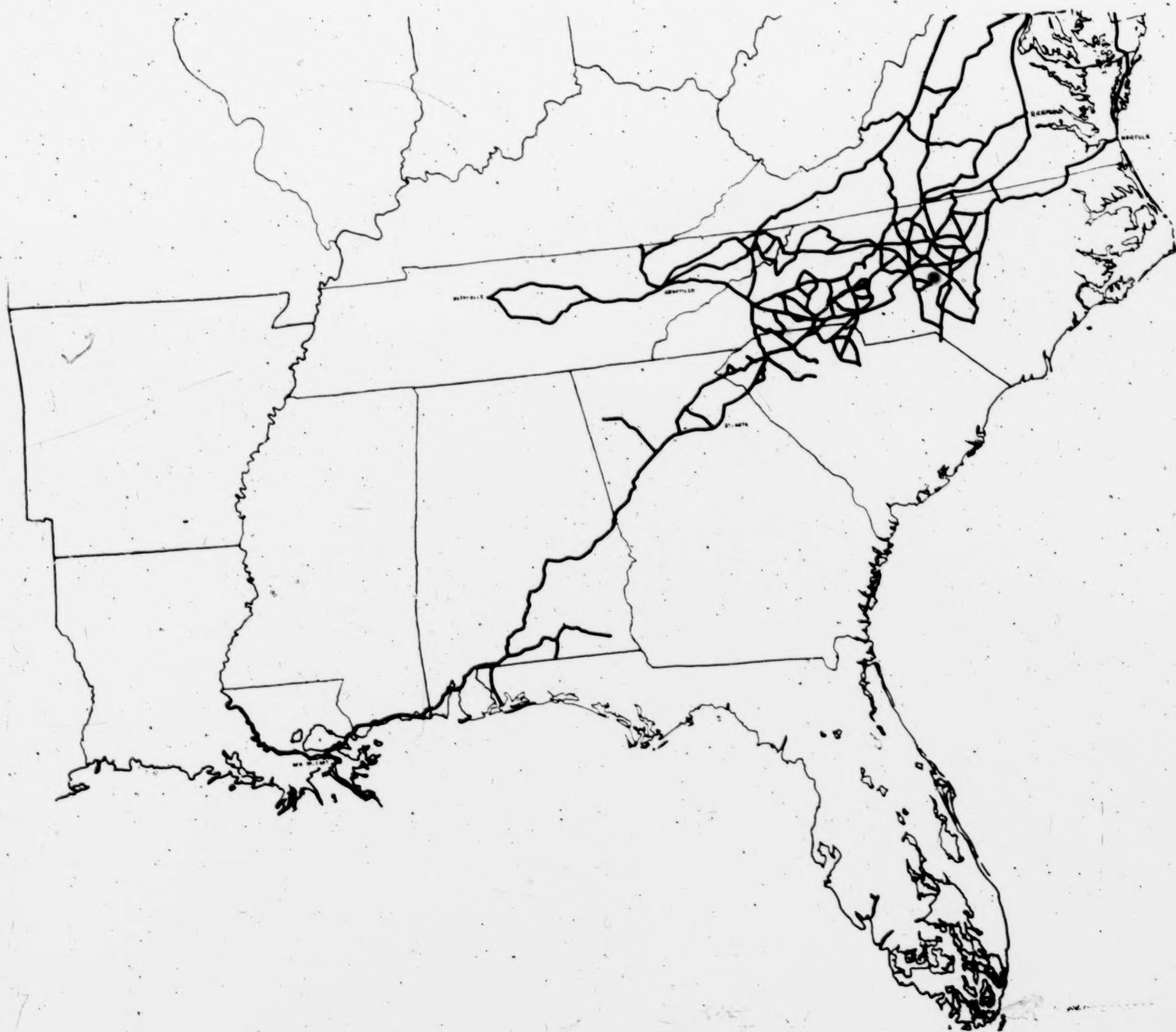
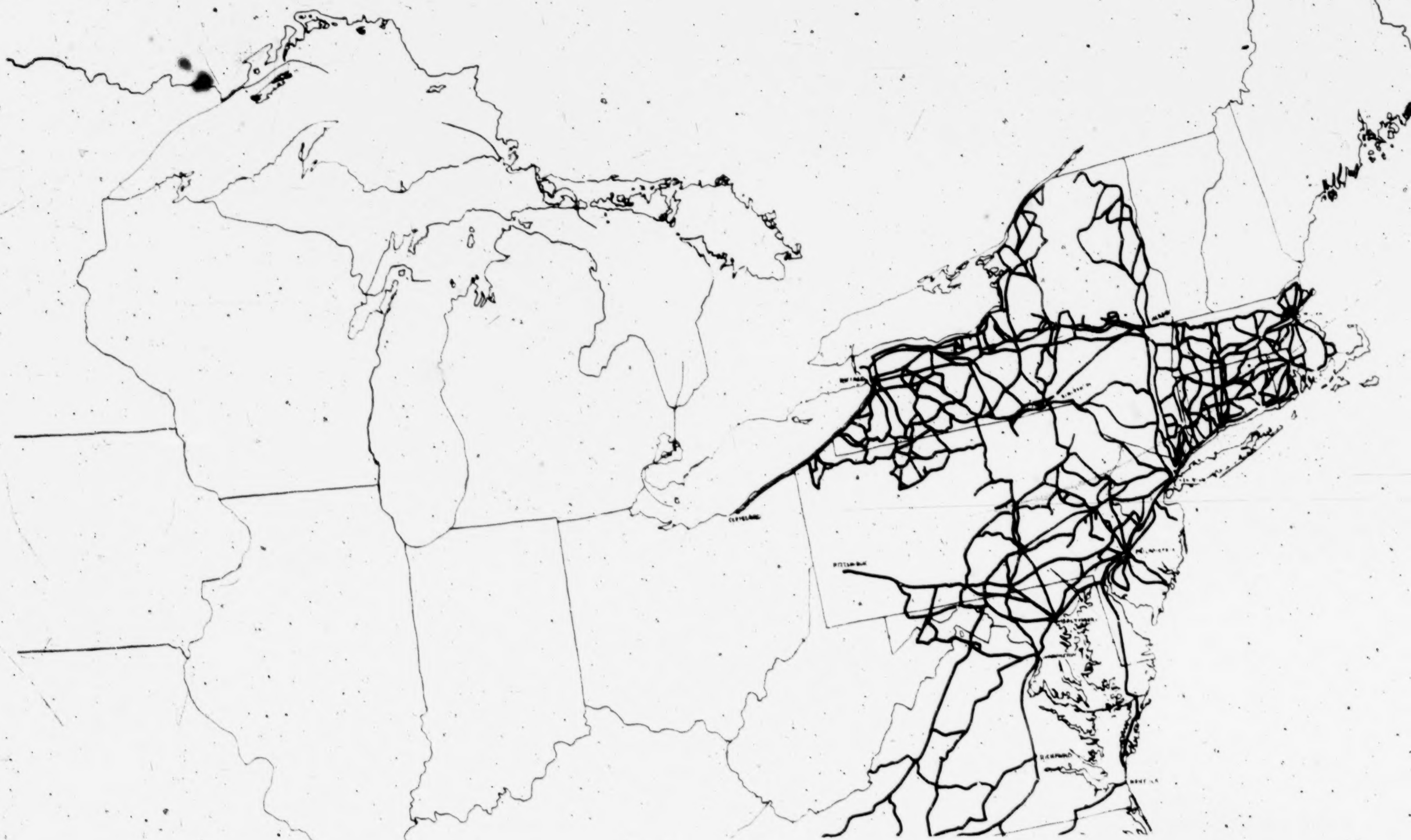
## GROUPING OF CLASS I CARRIERS BY SIZE OF GROSS REVENUE

1940

(APPLICANTS EXHIBIT NO. 3)



Source: Annual Reports to Interstate Commerce Commission by carriers.



Witness F. E. Berquist.

## Dockets MC-F-1612, 1613

COMPILATION OF GROSS INTERCITY REVENUES OF CLASS I CARRIERS  
INCLUDED IN APPLICANTS EXHIBIT NO. 4

Interstate Motor Freight System	\$9,987,138.25
Keeshin Motor Express Co., Inc.	5,873,320.07
Midwest Haulers, Inc.	3,850,318.02
Transamerican Freight Lines, Inc.	3,496,293.35
Motor Express, Inc.	2,254,482.11
Spector Motor Service, Inc.	1,723,516.65
W. T. Cowan, Inc.	1,319,123.80
The Western Express Co.	708,462.89
Lyons Transportation Co.	679,443.21
York-Buffalo Motor Express, Inc.	673,844.37
Niagara Motor Express, Inc.	600,673.11
A. & B. Fast-Freight, Inc.	512,513.14
Mushroom Transportation Company, Inc.	496,599.45
Onandaga Freight Corp.	425,114.10
Red Star Express Lines of Auburn, Inc.	360,927.01
Highway Freight, Maplewood, New Jersey	332,950.47
Shirks Motor Express Corporation	326,984.71
C. A. B. Y. Transportation Co.	286,621.61
John Vogel	270,000.00
Boss Lines, Inc.	260,329.79
Whinney Express	252,835.15
Stibbs Transportation Lines, Inc.	234,463.45
Hudson Motor Freight Service, Inc.	227,363.62
Smith & Howell Film Service, Inc.	217,990.45
Rhinevault Trucking Co., Inc.	214,160.11
Boyce Motor Lines, Inc.	207,514.29
Valetta Motor Trucking Co.	202,889.71
Dorn's Transportation, Inc.	182,463.02
Canny Trucking Co., Inc.	165,000.00
N. C. Purdie Corporation	154,852.61
Lincoln Storage and Carting Co.	140,830.79
Riverside Service Corporation	130,834.67

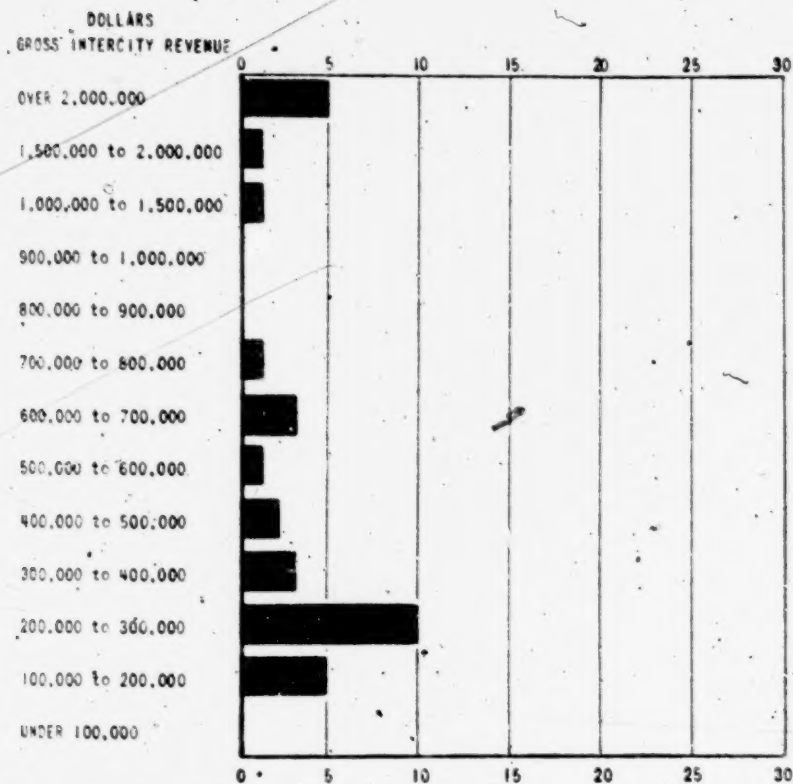
DOCKETS NO. P 1612, 1613

EXHIBIT NO.

WITNESS: F. E. BERQUIST

GROUPING OF CLASS I CARRIERS BY SIZE OF GROSS REVENUE  
1940

(APPLICANTS EXHIBIT NO. 4)



Source: Annual Reports by Carriers to the Interstate Commerce Commission 1940.

## STATE LAW RESTRICTIONS

## PALLATING TO LENGTHS AND WEIGHTS OF MOTOR VEHICLES OPERATED BY INTERSTATE COMMON CARRIERS OF PROPERTY

Witness

Exhibit No. 25

State	Over-all length in feet		Maximum axle load		4-wheel single unit		6-wheel single unit		Maximum gross weight		Formula	
	Single unit	Tractor-intrailer	Other combinations	Tractor-intrailer	Other combinations	Tractor-intrailer	Other combinations	Tractor-intrailer	Other combinations	Tractor-intrailer	Other combinations	Formula
Alabama	33'	40'	N. P.	N. P.	N. S.	30,000	40,000	40,000	40,000	N. P.	N. P.	
Alaska	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(D) N. P.	(D) N. P.	
Arizona	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(F) 44,000	50,000	750 (1 + 40)
Arkansas	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
California	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Colorado	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Connecticut	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Delaware	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
District of Columbia	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Florida	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Georgia	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Idaho	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Illinois	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Indiana	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Iowa	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Kansas	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Kentucky	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Louisiana	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Maine	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Maryland	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Massachusetts	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Michigan	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Minnesota	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Mississippi	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Missouri	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Montana	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Nebraska	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Nevada	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
New Hampshire	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
New Jersey	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
New Mexico	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
New York	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
North Carolina	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
North Dakota	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Ohio	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Oklahoma	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Oregon	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Pennsylvania	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Rhode Island	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
South Carolina	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
South Dakota	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Tennessee	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Texas	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Vermont	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Virginia	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Washington	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
West Virginia	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Wisconsin	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	
Wyoming	33'	40'	45'	45'	22,000	32,000	40,000	40,000	40,000	(L) 60,000	60,000	

(N) - New laws based on formula become effective in new vehicles after January 1, 1942.  
 (O) - 3,200 lbs. permissible on two axle vehicle with six wheels.  
 (P) - 20,000 lbs. on county roads.  
 (Q) - 10% higher load permitted on six ply-inch low pressure tires.  
 (R) - 12,000 lbs. net load limit.  
 (S) - 26,000 lbs. without power brakes on both rear axles.  
 (T) - 30,000 lbs. permitted if vehicle has 8 or more wheels.  
 (U) - 16,000 lbs. net load limit.  
 (V) - 16,000 lbs. net load limit.  
 (W) - Truck and trailer limited to 12,000 lbs. per load each.  
 (X) - This value for Class B-10 bridges. Higher values permitted for Class B-5 and B-20 bridges.

1783

*Exhibit No. 26*

Before the Interstate Commerce Commission

I. C. C. Docket MC-F-1612

MC-F-1613

## APPLICATIONS OF ASSOCIATED TRANSPORT, INC.

Statement of miles of regular routes operated by individual carriers; aggregate number of miles of regular routes over which applicant would operate, and number of miles of duplicated regular routes

I. Number of miles of regular routes operated by individual carriers—highway distances:

	<i>Miles</i>
Arrow Carrier Corporation.....	1,420
Barnwell Brothers, Inc.....	5,734
Consolidated Motor Lines, Inc.....	8,229
Horton Motor Lines, Incorporated.....	3,854
McCarthy Freight System, Inc.....	4,074
M. Moran Transportation Lines, Inc.....	7,493
Southeastern Motor Lines, Inc.....	2,714
Transportation, Inc.....	3,396
Total.....	37,884

II. Aggregate number of miles of regular routes over which applicant would operate, if and when application were approved and operating rights unified—highway distance: 24,338 miles.

III. Number of miles of duplicate regular routes which would be eliminated, if and when application were approved and operating rights unified—highway distance: 13,546 miles.

## VERIFICATION

STATE OF NEW YORK.

*County of New York, ss:*

B. M. Seymour, being duly sworn, deposes and says that the foregoing data are true and correct to the best of his knowledge and belief.

B. M. SEYMOUR.

Subscribed in my presence, and sworn to before me, by the affiant above named, this 18th day of September 1941.

JOSEPH C. CATANZARO,

*Notary Public.*

Before the Interstate Commerce Commission

Docket Nos. MC-F-1612, MC-F-1613.

APPLICATION OF ASSOCIATED TRANSPORT, INC.

Amount of interline freight interchanged at New York City during the calendar year 1940 by the individual carrier companies.

Carriers	1 Carriers in proposed unification	2 Carriers not in proposed unification	3 Totals, columns 1 and 2
Arrow Carrier Corp.	\$32,365.38	\$4,830.37	\$37,195.75
Barnwell Brothers, Inc.	172,349.73	65,877.64	238,227.37
Consolidated Motor Lines, Inc.	69,673.95	301,740.39	371,414.34
Horton Motor Lines, Inc.	129,980.09	152,691.18	273,671.27
McCarthy Freight System, Inc.			
Mc Moran Transportation Lines, Inc.			
Southeastern Motor Lines, Inc.	7,667.64	60,005.35	76,672.99
Transportation, Inc.			
Totals	403,036.79	504,144.93	997,181.72

## VERIFICATION

STATE OF NEW YORK,

County of New York, ss:

B. D. Ryan, being duly sworn, deposes and says that the foregoing data are true and correct to the best of her knowledge and belief.

B. D. RYAN.

Subscribed in my presence, and sworn to before me, by the affiant above named, this 18th day of September 1941.

JOSEPH C. CATANZARO,

Notary Public.

1785

Exhibit No. 28

I. C. C. Docket MC-F-1612  
MC-F-1613

## APPLICATION OF ASSOCIATED TRANSPORT, INC.

1. Total freight handled by The Mason and Dixon Lines,  
Incorporated, for first seven months 1941:

	Pounds
January .....	21, 507, 727
February .....	20, 509, 765
March .....	22, 842, 307
April .....	22, 938, 407
May .....	25, 466, 296
June .....	25, 876, 137
July .....	27, 403, 907

Total ..... 166, 544, 516

2. Total interchange of The Mason and Dixon Lines at New  
York, N. Y., with carriers not involved in Associated Trans-  
port Application for 7 month period ending July 31, 1941:

Received from connecting lines .....	4, 841, 181
Delivered to connecting lines .....	14, 858, 812

3. Total interchange of The Mason and Dixon Lines at Atlanta,  
Ga., with carriers not involved in Associated Transport  
Application for 7 month period ending July 31, 1941:

Received from connecting lines .....	6, 207, 836
Delivered to connecting lines .....	9, 808, 131

## VERIFICATION

STATE OF TENNESSEE,

County of Sullivan, ss:

E. E. Rosborough, being duly sworn, deposes and says that the foregoing data are true and correct to the best of his knowledge and belief.

E. E. ROSBOROUGH.

E. E. Rosborough.

Subscribed in my presence and sworn to before me, by the affi-  
ant above named, this 9th day of October, 1941.

E. W. KING,

Notary Public.

My commission expires July 29, 1942.

Before the Interstate Commerce Commission

Docket Nos. MC F-1612, MC F-1613

APPLICATION OF ASSOCIATED TRANSPORT, INC.

Amount of interline freight interchanged at New York-City during the calendar year 1940 by the individual carrier companies. These figures represent the sums accruing to the respective carriers from the freight interchanged

MCLEAN TRUCKING CO., INC., ET AL.

Carriers	Carriers in Proposed Unification			Carriers Not in Proposed Unification			Total Received From	Total Delivered To	Total Interchange
	Received From	Delivered To	Total	Received From	Delivered To	Total			
Arrow Carrier Corporation	\$14,084.67	\$18,280.71	\$32,365.38	\$2,501.61	\$2,328.76	\$4,830.37	\$16,586.28	\$20,609.47	\$37,195.75
Barnwell Brothers, Inc.	54,453.37	172,349.73	226,803.10	27,608.61	38,269.03	65,877.64	112,119.84	126,107.30	238,227.37
Cornwall Motor Lines, Inc.	27,254.04	42,419.91	69,673.95	130,165.00	171,555.39	301,740.39	157,419.04	213,945.30	371,414.34
Horton Motor Lines, Inc.	70,253.14	50,726.95	120,980.09	86,301.05	66,300.13	152,601.18	156,554.19	117,117.08	273,671.27
McCully Freight System, Inc.									
McLean Transportation Lines, Inc.	4,258.38	3,469.26	7,727.64	9,016.11	59,989.24	69,005.35	13,274.49	63,308.50	76,572.99
Southeastern Motor Lines, Inc.									
Transportation, Inc.									
Totals	200,301.60	292,735.19	493,036.79	255,632.38	338,492.55	594,124.93	455,853.98	541,227.74	997,181.72

The separation of Barnwell Brothers, Inc., interchange between Received From and Delivered To is Barnwell Brothers' estimate. Barnwell Brothers state that this information could not be obtained except by inspection and separation of several hundred thousand bills of lading, taking a number of men from 30 to 60 days. The estimate is based on their best judgment in the absence of any dependable information.

# VERIFICATION

STATE OF NEW YORK,  
County of New York, ss.

B. D. Ryan, being duly sworn, deposes and says that the foregoing data are true and correct to the best of her knowledge and belief.

Subscribed in my presence, and sworn to before me, by the affiant above named, this 18th day of September 1941.

B. D. RYAN.

JOSEPH C. CATANZARO, Notary Public.

1787 Copies to:

David Grant MacDonald, Esquire, 16 Parkside Road,  
Silver Spring, Md.

Smith R. Brittingham, Jr., Esquire, 3311 Dept. of Justice Building,  
Washington, D. C.

James D. Mann, Esquire, 450 Munsey Building, Washington,  
D. C.

Thomas P. O'Brien, Esquire, 815 15th Street NW., Washington,  
D. C.

W. G. Burnette, Esquire, 209 Lynch Building, Lynchburg, Va.

John M. Miller, Esquire, First National Bank Bldg., Kingsport,  
Tenn.

Fred A. Tobin, Esquire, 815 15th Street NW., Washington,  
D. C.

J. B. Dempsey, Esquire, First National Bank Bldg., Kings-  
port, Tenn.

L. F. Orr, Arcade Building, St. Louis, Mo.

W. S. Campfield, Secy., Virginia State Horticultural Society.

Carroll R. Miller, Secy., West Virginia Horticultural Society.

L. E. Newcomer, Mgr., Lehigh Mountain Fruit Growers, Inc.  
Appalachian Apple Service, Inc., Carroll R. Miller, Secy.

Arne C. Wifrud, Esquire, 3311 Dept. of Justice Building, Wash-  
ington, D. C.

Joseph W. Connolly, Esquire, 1 Franklin Street, Alexandria, Va.

E. F. Lacey, Esquire, 450 Munsey Building, Washington, D. C.

Floyd F. Shields, Esquire, 221 West Roosevelt Road, Chicago,  
Ill.

Charles J. Fagg, Esquire, 24 Branford Place, Newark, New  
Jersey.

Warren Woods, Esquire, 735 Transportation Bldg., Washing-  
ton, D. C.

James A. Glenn, Esquire, 815 15th Street NW., Washington,  
D. C.

Frank J. Coleman, Esquire, 3311 Department of Justice Bldg.,  
Washington, D. C.

William H. Ott, Jr., 500 Teshtigo Court, Chicago, Ill.

1506

MCLEAN TRUCKING CO., INC., ET AL.

1788

Exhibit 30

HARRY J. REICHER &amp; COMPANY

CERTIFIED PUBLIC ACCOUNTANTS

Empire State Building, New York

Lackawanna 4-9470.

NOVEMBER 26, 1941.

Mr. J. ED. DAVEY,

Chief, Finance Division, Bureau of Motor Carriers,  
Interstate Commerce Commission, Washington, D. C.

DEAR SIR: In response to the request in your telegram dated November 24, 1941, we submit herewith a schedule showing the fixed charges of the companies included in the application of Associated Transport, Inc., for the year ended April 30, 1941.

	Interest on—			Total
	Mortgages and equipment	Unsecured obligations	Life-insurance premiums	
Horton Motor Lines, Inc.		\$1,867.95	\$14,249.00	\$16,116.95
Barnwell Brothers, Inc.	\$7,488.26	4,376.57		11,864.83
Southeastern Motor Lines, Inc.	317.15	479.02	213.75	1,009.92
Transportation, Inc.	4,918.49	5,041.93		9,960.42
McCarthy Freight System, Inc.	9,100.93	1,023.00	1,396.60	11,520.53
Consolidated Motor Lines, Inc.	11,491.92	1,010.44	1,447.00	13,949.36
M. Moran Transportation Lines, Inc.		606.83	1,559.75	2,166.58
Arrow Carrier Corp.	3,210.56			3,210.56
Southern New England Terminals, Inc.	3,277.32			3,277.32
Brown Equipment & Mfg. Co., Inc.		860.42		860.42
Conger Realty Company	7,835.81			7,835.81
Barnwell Warehouse & Brokerage Co.	716.44			716.44
Totals	48,356.88	15,266.16	18,866.10	82,489.14

The life insurance premiums indicated above will be eliminated should this merger be approved, as the agreements contain an option through which the insured officers may purchase these policies from the respective companies. Your kind attention is also directed to the fact that these life insurance premiums have been charged to surplus in the preparation of our April 30, 1941, statements.

1789 Rentals under leases, etc., cover terminals and are not of the type which would be classified as a fixed charge; consequently, this item is not included in the above.

Very truly yours,

HARRY J. REICHER,  
Certified Public Accountant.

HJR:G.

1791

*Plaintiff's Exhibit 4***ORDER**

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 24th day of September A. D. 1942

**No. MC-F-1613****ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES**

Upon consideration of the petition of Associated Transport, Inc., filed herein September 5, 1942, submitting for approval, pursuant to condition attached to order entered herein March 16, 1942 (38 M. C. C. 137), certain subscription agreements proposed to be accepted by it for the sale of 9,000 shares of its preferred capital stock, issuance of which was conditionally authorized by said order, and good cause appearing therefor:

It is ordered: That said petition be, and it is hereby, granted, and that said subscription agreements be, and they are hereby, approved.

By the Commission.

[SEAL]

W. P. BARTEL, *Secretary*.

1792

**Before the Interstate Commerce Commission****ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES**

Submission of Stock Subscriptions Proposed To Be Accepted by Associated Transport, Inc., for the Sale of Preferred Stock in Accordance With the Commission's Order in Case MC-F-1613.

*Petition***Filed Sept. 5, '42**

Associated Transport, Inc., a Delaware corporation subject to the provisions of the Transportation Act of 1940, presents for consideration of the Interstate Commerce Commission:

I. That by order dated March 16th, 1942, the Interstate Commerce Commission in Case MC-1613—Issuance of Securities—authorized and permitted the issuance and sale by Associated Transport, Inc., of up to 15,000 shares of such company's preferred six percent capital stock.

II. That negotiations had with various financial institutions has developed that in the light of uncertainties created by rubber

shortages, gasoline shortages, and pending litigation, coupled with the distressed state of the securities market, a public distribution of preferred stock may not be had without granting upwards of ten percent discount to underwriters in addition to making available common stock to be sold in conjunction with the preferred.

III. That accordingly Associated Transport, Inc., has explored methods of interim financing pending improvement in the aforesaid unpropitious circumstances.

IV. That it is the opinion of the directors of Associated Transport, Inc., that for reasons aforesaid complete interim financing by direct loaning of necessary funds from banking institutions would be unsound, unpracticable, and even dangerous since it would involve fixed repayment dates and other onerous provisions.

1793 V. That a limited market is available for the sale of the preferred stock at a par direct to Truck Manufacturers and Tire Manufacturers, etc., with whom the constituent companies of Associated Transport, Inc., have done business in the past and with whom agreeable and beneficial relations have long been established.

VI. That in the premises of Board of Directors of Associated Transport, Inc., authorized its proper officers to negotiate with the aforesaid suppliers for the sale of preferred stock, subject to conditions as follows:

(a) That such sale receive any required approval of the Interstate Commerce Commission.

(b) That any stock so sold be subject to repurchase, at the option of Associated Transport, Inc., at any time during the five years following such sale for the repurchase price of \$102 per share.

(c) That if practicable such stock should be sold to more than one company in each class of supplier (i. e. Truck Manufacturer, etc.).

(d) That sales to members of a class must be in approximately equal amounts.

VII. That acting on and pursuant to such authority, the officers of Associated Transport, Inc., have succeeded in effectuating sales, subject to such conditions, to the companies and in the amounts evidenced by the photostatic copy of subscriptions attached hereto and marked "Exhibit A." That such subscriptions total \$900,000 and are divided \$150,000 to each of four Truck Manufacturers and two Tire Manufacturers.

VIII. The Commission is reminded that one of the constituent companies of Associated Transport, Inc., namely the Brown Manufacturing Co., is in the business of manufacturing tractors and

trailers of a type suitable at least to the requirements of a 1794 part of Associated's operations and that additional sources of supply of highway equipment and tires are not included in the list of companies proposing to acquire Associated preferred stock. It has been deemed expedient that adequate yardsticks respecting prices of supplies be provided both within and without the group proposing to purchase securities.

IX. That it is anticipated that the impossibility of acquiring any substantial quantity of new equipment and an expected lag between depreciation rates and increased cost of maintaining old equipment will result in such an improvement in the cash position of Associated Transport's constituent companies as to render unnecessary the immediate full exercise of the aforementioned conferred authority to issue 15,000 shares of preferred stock for working capital.

Wherefore Associated Transport, Inc., prays that, if required, it may have the early approval of your Honorable Body to this transaction in accordance with and subject to all the terms and conditions of your aforesaid order of March 16th, 1942, and orders supplemental thereto.

Respectfully submitted:

ASSOCIATED TRANSPORT, INC.,  
1715 Broadway, New York City.

By (s) B. M. SEYMOUR,  
B. M. Seymour, Its President.

STATE OF NEW YORK,

County of New York, City of New York, ss:

B. M. Seymour, being duly sworn, deposes and says that he is the President of Associated Transport, Inc., and that he has read the foregoing and that the matters therein contained are true.

Deponent further says that he has affixed his signature with 1795 the knowledge of and pursuant to the authority duly conferred upon him by the directors of Associated Transport, Inc.

(s) B. M. SEYMOUR.

Subscribed and sworn to before me this 4th day of September 1942.

[SEAL]

(s) PETER W. SPIESS,  
Notary Public, New York County.

Peter W. Spiess, Notary Public, Bronx Co. Clk's No. 199, Reg. No. 13544. N. Y. Co. Clk's No. 132, Reg. No. 4597. Commission expires March 30th, 1944.

1796 Exhibit A follows:

1797

## SUBSCRIPTION AGREEMENT

The undersigned hereby subscribes for 1,500 shares of the Preferred Capital Stock of Associated Transport, Inc., a Delaware corporation, with its principal place of business at 1775 Broadway, New York, New York; and agrees to pay therefor, on delivery of said shares, the sum of \$150,000.00, or \$100.00 per share.

It is understood, agreed and made a part of this purchase contract, that Associated Transport, Inc., shall have the right and option to repurchase said shares of stock, or any part thereof, at any time within a period of five years from this date at and for the price of \$102.00 per share; and nothing to the contrary appearing in said certificates or the Charter of the Corporation shall abrogate this understanding. The subscribers hereto agree that the substance of this provision shall be written or stamped upon each of the certificates representing said shares, or any reissue thereof.

It is further understood and agreed that said 1,500 shares of the Preferred Capital Stock of Associated Transport, Inc., shall when paid for as hereinabove agreed be fully paid and non-assessable, and that all issue and transfer taxes in respect thereof shall have been paid without liability of the undersigned therefor.

This 2nd day of July 1942.

THE AUTOCAR COMPANY,

By (s) R. P. PAGE, JR.,

*President.*

1798

THE GENERAL TIRE & RUBBER COMPANY

AKRON, OHIO

JULY 2, 1942.

Office of the President.

Mr. B. M. SEYMOUR,

*Associated Transport Incorporated,*

*1775 Broadway, New York City.*

DEAR MR. SEYMOUR: We wish to confirm our telephone conversation to the effect that we are committed to purchase fifteen hundred shares of the preferred stock of your company with the further stipulation that you have the option of redeeming it at \$102.00.

It is necessary for me to do this by letter because your form is in Akron.

Yours very truly

THE GENERAL TIRE & RUBBER CO.,

(s) W. O'NEIL, *President.*

WON:bgs.

1799

## THE WHITE MOTOR COMPANY

Manufacturers of America's Most Modern Trucks and Busses

CLEVELAND, OHIO

JUNE 30, 1942.

Robert C. Lee, Treasurer.

ASSOCIATED TRANSPORT, INC.

1775 Broadway, New York, N. Y.

Attention: Mr. B. M. Seymour, President.

GENTLEMEN: We wish to confirm the agreement made with your Mr. Seymour by our Vice President, Mr. J. N. Bauman, that we would purchase a certain number of shares of your 6% Preferred Stock.

The White Motor Company hereby subscribes for 1500 shares of the 6% Preferred Capital Stock of Associated Transport, Inc., a Delaware corporation with its principal place of business at 1775 Broadway, New York, N. Y. and agrees to pay therefor upon delivery of said shares the sum of \$150,000 or \$100 per share. This Subscription Agreement shall terminate if such shares of stock are not delivered to us prior to October 1, 1942.

It is understood, agreed and made a part of this Subscription Agreement that Associated Transport, Inc. shall have the right and option to repurchase said shares of stock or any part thereof at any time within the period of five years from June 30, 1942 at and for the price of \$102 per share plus accrued and unpaid dividends; and nothing to the contrary appearing in the Stock Certificates or the Charter of the Corporation shall abrogate this understanding. We agree that the substance of this provision shall be written or stamped upon each of the Certificates representing such shares or any reissue thereof.

Very truly yours,

(s) ROBERT C. LEE,

Treasurer.

RCL:JS.

1800

## SUBSCRIPTION AGREEMENT

The undersigned hereby subscribes for 1500 shares of the Preferred Capital Stock of Associated Transport, Inc., a Delaware corporation, with its principal place of business at 1775 Broadway, New York, New York; and agrees to pay therefor, on delivery of said shares, the sum of \$150,000.00, or \$100.00 per share.

It is understood, agreed and made a part of this purchase contract, that Associated Transport, Inc. shall have the right and

option to repurchase said shares of stock, or any part thereof, at any time within a period of five years from this date at and for the price of \$102.00 per share; and nothing to the contrary appearing in said certificates or the Charter of the Corporation shall abrogate this understanding. The subscribers hereto agree that the substance of this provision shall be written or stamped upon each of the certificates representing said shares, or any reissue thereof.

It is further understood and agreed that said 1,500 shares of the Preferred Capital Stock of Associated Transport, Inc. shall when paid for as hereinabove agreed be fully paid and non-assessable, and that all issue and transfer taxes in respect thereof shall have been paid without liability of the undersigned therefor.

This 30 day of June 1942.

MACK MANUFACTURING CORPORATION,

(s) F. F. STANFORD, *Vice President*.

1801

#### SUBSCRIPTION AGREEMENT

The undersigned hereby subscribe for 4,500 shares of the Preferred Capital Stock of Associated Transport, Inc., a Delaware corporation with its principal place of business at 1775 Broadway, New York, New York; and agreed to pay therefor, on delivery of said shares, the sum of \$150,000.00, or \$100.00 per share.

It is understood, agreed and made a part of this purchase contract, that Associated Transport, Inc. shall have the right and option to repurchase said shares of stock, or any part thereof, at any time within a period of five years from this date at and for the price of \$102.00 per share, plus accumulated dividends; and nothing to the contrary appearing in said certificate or the Charter of the Corporation shall abrogate this understanding. The subscriber hereto agrees that the substance of this provision shall be written or stamped upon each of the certificates representing said shares, or any reissue thereof.

This subscription is executed with the understanding and upon the express condition that it shall not be binding upon the undersigned until and unless bona fide subscriptions shall have been obtained by Associated Transport, Inc., within thirty (30) days from the date hereof, from persons, associations, firms, partnerships or corporations, other than the undersigned, at the par value thereof, in the aggregate amount of not less than \$850,000.00 par value of additional shares of the Preferred Capital Stock of the present issue, making a total of not less than One Million (\$1,000,000.00) Dollars par value of Preferred Capital Stock in addition

to that now issued and outstanding, and upon the further condition that no conditions, limitations or restrictions other than those now contained in the Certificate of Incorporation, as amended, shall be imposed upon the issuance and sale of this stock.

This 1st day of July 1942.

YELLOW TRUCK & COACH MANUFACTURING COMPANY.

By (s) W. H. GROSSMAN, *Vice President*.

YELLOW TRUCK & COACH MANUFACTURING COMPANY

PONTIAC, MICHIGAN

Harry C. Grossman, *Vice President*.

JULY 27TH, 1942.

Mr. B. M. SEYMOUR, *President*,

*Associated Transport, Inc.,*

*1775 Broadway, New York City, N. Y.*

DEAR MR. SEYMOUR: Mr. Irving B. Babcock, President of our Company, has referred your letter of July 22, 1942 to me for attention.

I have considered your suggestions to amend our Subscription Agreement dated July 1, 1942. In the light of your conversations with Mr. Babcock and pursuant to my understanding of those conversations, I suggest that the last paragraph of our Subscription Agreement be amended as follows:

"This subscription is executed with the understanding and upon the expressed condition that it shall not be binding upon the undersigned until and unless bona fide subscriptions shall have been obtained by Associated Transport, Inc., within thirty (30) days from the date hereof, from at least three (3) other corporations in the truck-manufacturing business, other than the undersigned, each in like amounts, in the aggregate amount of not less than \$450,000.00 par value of additional shares of the preferred capital stock of the present issue, making a total of not less than \$600,000.00 par value of preferred capital stock in addition to that now issued and outstanding, and upon the further condition that no conditions, limitations, or restrictions, other than those now contained in the Certificate of Incorporation, as amended, shall be imposed upon the issuance and sale of this stock."

Upon your written acceptance of our offer to amend the Subscription Agreement, as hereinabove set forth, we will consider the Subscription Agreement amended.

Yours very truly,

(s) H. C. GROSSMAN,  
H. C. GROSSMAN,  
*Vice President.*

HCG am.

1804

JULY 29, 1942.

Mr. H. C. GROSSMAN, *Vice President,*  
*Yellow Truck & Coach Mfg. Company, Pontiac, Michigan.*

DEAR MR. GROSSMAN: Have your letter of July 27, suggesting amending of our Subscription Agreement by striking out the last paragraph and substituting in lieu thereof the following:

"This subscription is executed with the understanding and upon the expressed condition that it shall not be binding upon the undersigned until and unless bona fide subscriptions shall have been obtained by Associated Transport, Inc., within thirty (30) days from the date thereof, from at least three (3) other corporations in the truck manufacturing business, other than the undersigned, each in like amounts, in the aggregate amount of not less than \$450,000.00 par value of additional shares of the preferred capital stock of the present issue, making a total of not less than \$600,000.00 par value of preferred capital stock in addition to that now issued and outstanding, and upon the further condition that no conditions, limitations, or restrictions, other than those now contained in the Certificate of Incorporation, as amended, shall be imposed upon the issuance and sale of this stock."

The above amendment is entirely agreeable and you are hereby authorized to consider these Subscription Agreements amended as above.

Very truly yours,

ASSOCIATED TRANSPORT, INC.,  
B. M. SEYMOUR, *President.*

BMS:AD.

1805

## SUBSCRIPTION AGREEMENT

The undersigned hereby subscribes for 1,500 shares of the Preferred Capital Stock of Associated Transport, Inc., a Delaware corporation, with its principal place of business at 1775 Broadway, New York, New York; and agrees to pay therefor, on delivery of said shares, the sum of \$150,000.00, or \$100.00 per share.

It is understood, agreed and made a part of this purchase contract, that Associated Transport, Inc., shall have the right and option to repurchase said shares of stock, or any part thereof, at any time within a period of five years from this date at and for the price of \$102.00 per share; and nothing to the contrary appearing in said certificates or the Charter of the Corporation shall abrogate this understanding. The subscribers hereto agree that the substance of this provision shall be written or stamped upon each of the certificates representing said shares, or any re-issue thereof.

It is further understood and agreed that said 1,500 shares of the Preferred Capital Stock of Associated Transport, Inc., shall when paid for as hereinabove agreed be fully paid and nonassessable, and that all issue and transfer taxes in respect thereof shall have been paid without liability of the undersigned therefor.

This 3rd day of September 1942.

THE B. F. GOODRICH COMPANY,

By (s) JAS. J. NEWMAN, Vice President.

1806

In the Supreme Court of the United States

*Statement of Points To Be Relied Upon and Designation  
of Parts of the Record Necessary for Consideration Thereof*

Filed April 20, 1943

1. Now come the appellants in the above entitled cause and for their statement of the points on which they intend to rely in their appeal to this Court adopt the points contained in their assignment of errors heretofore filed herein.

2. The entire record in this cause as filed in this Court is necessary for consideration of the points stated by appellants and the entire transcript of record as it is submitted by the clerk of the District Court should be printed by the clerk of this Court (except that briefs filed by the parties in the

1807

proceeding before the Interstate Commerce Commission should be omitted).

E. B. USSERY (D. P. G.),

E. B. Ussery,

*Counsel for McLean Trucking Company, Inc.*

ROBERT H. SHIELDS,

Robert H. Shields,

*Solicitor of the United States Department of Agriculture,*

*Counsel for the Secretary of Agriculture of the United States.*

W. CARROLL HUNTER,

W. Carroll Hunter,

*Assistant Solicitor of the U. S. Department of Agriculture,*

*Counsel for the Secretary of Agriculture of the United States.*

MARTIN V. BURNS (D. P. G.),

Martin V. Burns,

*Counsel for American Farm Bureau Federation.*

Dated this 19th day of April 1943.

1808

PROOF OF SERVICE

I, W. Carroll Hunter, Assistant Solicitor of the Department of Agriculture, attorney for the Secretary of Agriculture in the above entitled action, hereby certify that on the 19th day of April 1943, I served the attached "Statement of Points to be Relied Upon and Designation of Parts of the Record Necessary for Consideration Thereof" upon:

1809 1. Arne C. Wiprud, Special Assistant to the Attorney General, Counsel for United States of America, Department of Justice, Washington, D. C.

2. Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission, Counsel for Interstate Commerce Commission, Interstate Commerce Commission, Washington, D. C.

3. Nordlinger, Reigelman, Cooper & Benetar, Counsel for Associated Transport, Inc., Barnwell Brothers, Incorporated, Consolidated Motor Lines, Incorporated, Horton Motor Lines, Incorporated, McCarthy Freight System, Inc., M. Moran Transportation Lines, Inc., Southeastern Motor Lines, Incorporated, Transportation, Incorporated, Barnwell Warehouse & Brokerage Company, Brown Equipment & Manufacturing Company, Conger Realty Company, and Southern New England Terminals, Inc., 420 Lexington Avenue, New York, New York.

4. The Transportation Company % Kuhn, Loeb & Company, 52 Williams Street, New York, New York.

5. Kuhn, Loeb & Company, 52 Williams Street, New York, New York.

6. Arrow Carrier Corporation, Park Street & Getty Avenue,  
Patterson, New Jersey.

7. Attorney General for the State of New York, Albany, New,  
York.

by depositing copies thereof in the United States mails enclosed  
in sealed envelopes, postpaid registered mail, addressed to each of  
said persons or attorneys at the address above set forth for each.

W. CARROLL HUNTER.

W. Carroll Hunter,

*Assistant Solicitor.*

*United States Department of Agriculture.*

[File endorsement omitted.]

1810 Supreme Court of the United States

*Order noting probable jurisdiction \**

April 19, 1943

The statement of jurisdiction in this case having been sub-  
mitted and considered by the Court, probable jurisdiction is  
noted.

[Endorsement on cover:] File No. 47830. D. C. U. S., Southern  
New York, Term No. 31. McLean Trucking Company, Inc., The  
Secretary of Agriculture of the United States, and American  
Farm Bureau Federation, Appellants *vs.* The United States of  
America, Interstate Commerce Commission, Associated Transport,  
Inc., Barnwell Brothers, Inc., et al. Filed April 2, 1943. Term  
No. 31 O. T. 1943.

**In the District Court of the United States  
for the Southern District of New York**

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CIVIL ACTION No. 18-116

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MCLEAN TRUCKING COMPANY, INC., PLAINTIFF

v.

UNITED STATES OF AMERICA AND INTERSTATE COM-  
MERCE COMMISSION, ET AL., DEFENDANTS

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**STATEMENT AS TO JURISDICTION**

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, McLean Trucking Company, Inc., The Secretary of Agriculture of the United States and American Farm Bureau Federation submit herewith their statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the decree of the District Court entered in this cause on the 28th day of December 1942. A petition for appeal was filed on February 23, 1943, and is presented to the District Court herewith, to wit, on the 23rd day of February 1943.

**JURISDICTION**

The jurisdiction of the Supreme Court to review by direct appeal the decree entered in this

(1) \*

cause is conferred by Section 210 of the Judicial Code, as amended, 36 Stat. 539, 540, 1087, 1150, 38 Stat. 208, 220 [Urgent Deficiencies Act of October 22, 1913], (28 U. S. C. 47a) and Section 238 of the Judicial Code, as amended, 43 Stat. 936, 938. (28 U. S. C. 345).

The following cases sustain the jurisdiction of the Supreme Court to review by direct appeal the decree entered in this cause: *Gregg Cartage Co. v. United States*, 316 U. S. 74, 78; *United States v. Carolina Freight Carriers Corp.*, 315 U. S. 475, 477; *Alton Railroad Co. v. United States*, 315 U. S. 15, 16-17; *Georgia Public Service Co. v. United States*, 283 U. S. 765, 769; *Atchison, Topeka & Santa Fe Railway Co. v. United States*, 279 U. S. 768, 770; *B. & O. Railroad Company v. United States*, 279 U. S. 781, 784-5; *New England Divisions Case*, 261 U. S. 184, 188-9.

#### STATUTES INVOLVED

The statutes involved are Section 5 of the Interstate Commerce Act, as amended by the Transportation Act of September 18, 1940, 54 Stat. 898, 905-910 (49 U. S. C. 5); the National Transportation Policy set forth in the said Act, 54 Stat. 899; Sections 1 and 2 of the Sherman Act of July 2, 1890, 26 Stat. 209 (15 U. S. C. 1-2); and Sections 7 and 10 of the Clayton Act of October 15, 1914, 38 Stat. 730, 731-2, 734 (15 U. S. C. 18, 20). The pertinent provisions of these statutes are set forth in the Appendix hereto.

**THE ISSUES AND THE RULING BELOW**

In a proceeding under Section 5 of the Interstate Commerce Act, the Interstate Commerce Commission on March 16, 1942, made an order authorizing and approving a proposed merger of certain common carriers by motor vehicle into a single company, Associated Transport, Inc. The merger includes the principal motor carriers operating along the Atlantic seaboard. Substantial competition among these carriers would be eliminated by the merger. The new company, Associated Transport, Inc., will be the largest common carrier of property by motor vehicle in the United States. It will have operating revenues ten times greater and a route mileage six times greater than any other motor carrier in the area where it operates. It will have no single competitor throughout that territory. It will have routes extending over 24,338 highway miles from New York and Massachusetts, on the north, to Louisiana and Florida, on the south. Kuhn, Loeb & Company (who have been for many years and still are bankers for the Pennsylvania Railroad Company and the Baltimore and Ohio Railroad Company, two rail carriers operating in the territory of the motor carriers involved in the merger) through a wholly owned subsidiary, The Transport Company, is a stockholder, and at the time of the hearing before the Commission had representation on the Board of Directors of Associated Transport, Inc.

In the proceedings before the Commission, the application for approval of the merger was opposed by the Secretary of Agriculture of the United States, the Antitrust Division of the United States Department of Justice, the National Grange, the National Industrial Traffic League, Super Service Motor Freight Company, Virginia State Horticultural Society, Inc., West Virginia State Horticultural Society, Maryland State Horticultural Society, Berks-Lehigh Mountain Fruit Growers, Inc., Appalachian Apple Service, Inc., and American Farm Bureau Federation.

The plaintiff, McLean Trucking Company, Inc., a motor carrier which competes in part of the territory involved with some of the defendant carriers included in the merger, brought suit in the District Court to set aside the Commission's order. As provided by Sections 208 and 211 of the Judicial Code (28 U. S. C. 46, 48) the United States was made a defendant. In the District Court the United States confessed error. The Secretary of Agriculture of the United States and the American Farm Bureau Federation intervened as plaintiffs. The Interstate Commerce Commission and the parties to the merger defended the Commission's order.

It was contended in the District Court that the order of the Commission was invalid for the following reasons:

(1) The Commission in finding under Section 5

(2) (b) of the Interstate Commerce Act that the merger of motor carriers was "consistent with the public interest," erred in that it applied the standards and criteria applicable to the merger of rail carriers under the Transportation Act of 1920, instead of applying the standards and criteria prescribed by the Transportation Act of 1940 with respect to motor carriers.

(2) The Commission erred in approving the merger without making a finding that its effect would not be inconsistent with the National Transportation Policy (as stated in the Transportation Act of 1940) to preserve the inherent advantages of motor transportation.

(3) The Commission, in making its finding as to whether the merger would "be consistent with the public interest," improperly failed to consider the policies and provisions of the antitrust and other laws of the United States.

(4) The Commission erred in concluding that Section 5 (11) of the Act, which provides that carriers participating in a merger approved by the Commission in accordance with the provisions of the Act are relieved from the prohibitions of the antitrust and other laws in so far as necessary to enable them to carry into effect the merger so approved; relieved the Commission from the requirement of considering the policies and provisions of the antitrust and other laws of the United

States in making its finding as to whether the merger would "be consistent with the public interest."

(5) The Commission erred in approving a merger involving the elimination of substantial competition without making a finding that the existing motor carrier services are inadequate.

(6) The Commission erred in approving the merger without making a finding, in accordance with the provisions of Section 5 (2) (c) (1) of the Act, as to the effect of the merger upon adequate transportation service to the public.

(7) There was no substantial evidence to support the Commission's finding that Associated Transport, Inc., through its relationship with Arrow Carrier Corporation, The Transport Company and Kuhn, Loeb & Company, was not affiliated with the Pennsylvania Railroad Company and the Baltimore & Ohio Railroad Company within the definition in Section 5 (6), and therefore not subject to the proviso of Section 5 (2) (b) of the Act; that in the absence of such evidence, the Commission erred in failing to make the findings, as required by Section 5 (2) (b), that the merger would enable carriers by railroad to use service by motor vehicle to public advantage in their operations and would not unduly restrain competition.

(8) The findings of the Commission were not supported by substantial evidence.

On December 28, 1942, the District Court entered its final decree dismissing the complaint, and denying the injunction prayed for by plaintiffs. The District Court held that the Commission's order was based on substantial evidence, was made in accordance with the applicable law, and was valid. The opinion of the Court together with its Findings of Fact and Conclusions of Law is set forth in the Appendix hereto.

The District Court held that it would consider the case as if Arrow Carrier Corporation had never been a party to the merger. The Commission, however, by its order of March 16, 1942, approved the transaction which permitted the inclusion of Arrow Carrier Corporation. An important issue was thereby presented as to the validity of the order of the Commission in view of the provisions of the Transportation Act of 1940 (Section 5 (2) (b) proviso) arising out of the domination of Arrow Carrier Corporation by Kuhn, Loeb & Company through its wholly owned subsidiary, The Transport Company. The entry of a supplemental order by the Commission following the institution of the suit in the District Court vacating its order of March 16, 1942, to the extent that it authorized the inclusion of Arrow Carrier Corporation, reduced the stock interest of Kuhn, Loeb & Company in Association Transport, Inc., but, as plaintiffs contended, did not

render moot the important public questions arising under Section 5 (2) (b) proviso.

**THE QUESTIONS ARE SUBSTANTIAL**

The questions involved are substantial and of public importance. Review by the Supreme Court is desirable, not only because of the magnitude of the contemplated merger and its effect upon the national economy, but also because of the complexity and far-reaching import of the novel questions of law and statutory questions involved.

The effect of the decision of the District Court is that the Commission in considering mergers of motor carriers need not take into consideration the national transportation policy as announced in the Transportation Act of 1940; need not apply the standards and criteria prescribed by the Transportation Act of 1940 governing mergers of motor carriers; need not consider the antitrust laws in determining whether the merger of motor carriers is in the public interest; need not consider the effect of mergers of motor carriers upon adequate transportation service; and need not consider in approving mergers of motor carriers whether existing motor carrier services are inadequate.

The court failed to consider the Commission's interpretation of the provision of the Transportation Act of 1940 designed to prevent railroad domination and control of motor carriers, which involves questions of far-reaching public importance.

These are questions which have not been, but should be decided by the Supreme Court.

Respectfully submitted.

✓ E. B. USSERY,  
E. B. Ussery,

*Counsel for McLean Trucking Company, Inc.*

✓ ROBERT H. SHIELDS,  
Robert H. Shields,

*Solicitor of the United States Department of Agriculture, Counsel for the Secretary of Agriculture of the United States.*

✓ KIRKPATRICK, MATHIAS & MELOY,

By PAUL E. MATHIAS,

Kirkpatrick, Mathias & Meloy, :

*Counsel for American Farm Bureau Federation.*

## APPENDIX

### INTERSTATE COMMERCE ACT

(54 Stat. 898, 905-910)

#### SEC. 5 \* \* \*

(2) (a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise;

\* \* \* \* \*

(b) Whenever a transaction is proposed under subparagraph (a), the carrier or carriers or person seeking authority therefor shall present an application to the Commission, \* \* \* - If the Commission finds that,

subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

(c) In passing upon any proposed transaction under the provisions of this paragraph (2), the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transactions; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

\* \* \* \* \*

(4) It shall be unlawful for any person, except as provided in paragraph (2), to enter into any transaction within the scope

of subparagraph (a) thereof, or to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more carriers, however such result is attained, \* \* \*

(6) For the purposes of this section a person shall be held to be affiliated with a carrier if, by reason of the relationship of such person to such carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or any other direct or indirect means), it is reasonable to believe that the affairs of any carrier of which control may be acquired by such person will be managed in the interest of such other carrier.

(11) The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall have full power (with the assent, in the case of a purchase and sale, a lease, a corporate consolidation, or a corporate merger, of a majority, unless a different vote is required under applicable State law, in which case the number so required shall assent, of the votes of the holders of the shares entitled to vote of the capital stock of such corporation at a regular meeting of such stockholders, the notice of such meeting to include such purpose, or at a special meeting thereof called for such purpose) to carry such transaction into effect and to own and operate any properties and exercise any

control or franchises acquired through said transactions without invoking any approval under State authority; and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are hereby relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction. Nothing in this section shall be construed to create or provide for the creation, directly or indirectly, of a Federal corporation, but any power granted by this section to any carrier or other corporation shall be deemed to be in addition to and in modification of its powers under its corporate charter or under the laws of any State.

#### NATIONAL TRANSPORTATION POLICY

(54 Stat. 899)

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transporta-

tion and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof, and to encourage fair wages and equitable working conditions; all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

#### SHERMAN ACT

(26 Stat. 209)

**SEC. 1.** Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

**SEC. 2.** Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or

commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

# CLAYTON ACT

(38 Stat. 730, 731-2, 734)

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempt-

ing to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That notli-

ing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

\* \* \*

SEC. 10. That after two years from the approval of this Act no common carrier engaged in commerce shall have any dealings in securities, supplies or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than \$50,000, in the aggregate, in any one year, with another corporation, firm, partnership, or association when the said common carrier shall have upon its board of directors or as its president, manager, or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in such other corporation, firm, partnership, or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors, and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

Any person who shall, directly or indirectly, do or attempt to do anything to pre-

vent anyone from bidding or shall do any act to prevent free and fair competition among the bidders or those desiring to bid shall be punished as prescribed in this section in the case of an officer or director.

Every such common carrier having any such transactions or making any such purchases shall within thirty days after making the same file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

If any common carrier shall violate this section it shall be fined not exceeding \$25,000; and every such director, agent, manager, or officer thereof who shall have knowingly voted for or directed the act constituting such violation or who shall have aided or abetted in such violation shall be deemed guilty of a misdemeanor and shall be fined not exceeding \$5,000, or confined in jail not exceeding one year, or both, in the discretion of the court.

United States District Court for the Southern  
District of New York

Civil Action Nos. 18-116

McLEAN TRUCKING COMPANY, INC., PLAINTIFF

v.

UNITED STATES OF AMERICA AND INTERSTATE  
COMMERCE COMMISSION, ET AL., DEFENDANTS

Before CHASE, C. J., WOOLSEY and MANDELBAUM,  
D. JJ.

Action by the McLean Trucking Company, Inc., against the United States to enjoin and set aside an order of the Interstate Commerce Commission granting petitions for the authorization of the merger of certain interstate carriers by motor vehicle and the approval of the issuance of securities in connection therewith.

Davies, Auerbach, Cornell & Hardy, Attorneys for plaintiff. E. B. Ussery, Orrin G. Judd and Charles V. Guthrie, of counsel.

Thurman Arnold, Assistant Attorney General Arne C. Wiprud, William R. Kueffner, Charles S. Collier, Sp. Assistants to the Attorney General; John H. D. Wiggee, David G. MacDonald, Sp. Attorneys Mathias F. Correa, U. S. Attorney, for United States.

Daniel W. Knowlton, Counsel for Interstate Commerce Commission.

Ralph F. Koebel, Attorney for Secretary of Agriculture.

Kirkpatrick, Mathias & Meloy, Attorneys for American Farm Bureau Federation.

Nordlinger, Riegelman, Cooper & Benetar, Attorneys for defendants, Mortimer A. Sullivan, of Counsel.

CHASE, Circuit Judge:

This action was brought by the plaintiff, a common carrier by motor vehicle within part of the territory in which the defendant motor carriers, or some of them, operate, against the United States of America and the Interstate Commerce Commission, Associated Transport, Inc., Arrow Carrier Corporation, Barnwell Brothers Incorporated, Consolidated Motor Lines Incorporated, Horton Motor Lines Incorporated, McCarthy Freight System, Inc., M. Moran Transportation Lines, Inc., Southeastern Motor Lines Incorporated, Transportation Incorporated, The Transport Company, Kuhn Loeb & Company, Barnwell Warehouse & Brokerage Company, Brown Equipment & Manufacturing Company, Conger Realty Company, and Southern New England Terminals, Inc., under the Urgent Deficiencies Act (38 Stat. 129, 210; 28 U. S. C. A. Secs. 45 and 47a) to enjoin and set aside an order of the Interstate Commerce Commission which authorized the merger of the defendants who are carriers by motor vehicle and the issuance of securities in connection therewith. It was heard by a court of three judges pursuant to the statute.

The principal issues are (1) whether the findings of the Commission are supported by the evidence and (2) if so, whether the Commission's order was erroneous because it resolved the questions presented by the standard of what it determined was adequate transportation facilities in

the public interest under the criteria prescribed in the Interstate Commerce Act without deciding that its order would not result in a consolidation that would violate the provisions of either the Sherman, or the Clayton Act, as those acts have been construed generally.

The proceedings before the Commission were instituted by Associated Transport, Inc., a Delaware corporation which was organized for the purpose of bringing about the proposed merger and which was not then engaged in the transportation business. The carriers by motor vehicle it was proposed to merge operated as common carriers on regular routes and one or more of them served communities in Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, Ohio, New Jersey, Delaware, Maryland, the District of Columbia, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, and Louisiana.

There were two petitions which were consolidated for hearing. The first was by Associated Transport, Inc., for authority under Sec. 5 of the Interstate Commerce Act (1) to obtain control through the purchase of their capital stock of the following eight common carriers by motor vehicle: Arrow Carrier Corporation, Paterson, N. J.; Barnwell Brothers Incorporated, Burlington, N. C.; Consolidated Motor Lines Incorporated, Hartford, Conn.; Horton Motor Lines Incorporated, Charlotte, N. C.; McCarthy Freight System, Inc., Taunton, Mass.; M. Moran Transportation Lines, Inc., Buffalo, N. Y.; Southeastern Motor Lines Incorporated, Bristol, Va., and Transportation In-

corporated, Atlanta, Ga. and (2) to consolidate into a unit for operation by itself the properties and rights to operate of the named carriers within one year from the date it should acquire the control of them. The second application was for authority to issue preferred and common stock to obtain funds needed to acquire the control of the named carriers and four associated noncarriers viz, Barnwell Warehouse & Brokerage Company, Burlington, N. C.; Brown Equipment & Manufacturing Company, Charlotte, N. C.; Conger Realty Company, Charlotte, N. C., and Southern New England Terminals, Inc., Taunton, Mass.

The Antitrust Division of the Department of Justice, the Secretary of Agriculture, four fruit growers associations and Super Service Freight Company, a common carrier by motor vehicle, intervened and opposed the applications. There were other intervenors who, however, stood indifferent except the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America which at the close of the hearings supported the applications.

A previous application by another petitioner for authority to unify by means of a holding company set-up twenty-nine common carriers by motor vehicle which included the eight already named had been denied and these applications were the result of the desire of the petitioner and the eight operators involved to avoid the defects in the first application which had led to its denial largely on the ground that the then proposed unification was not economical in that it would permit two or more carriers under common control to engage in

duplication of service over most of the routes in the greater part of the territory affected.

In the instant proceedings there were extensive hearings before an examiner at which a large amount of evidence was introduced. After his proposed report was duly served on the parties, the intervenors who opposed the applications filed objections which were argued before the Commission which after due consideration made the order now under attack.

The Commission made findings on what the record shows was adequate supporting evidence that the proposed consolidation would bring about economies and greater efficiency in operation; improvement in service; leave ample competitive motor vehicle carrier service in the territory affected; and be in the public interest within Sec. 5 of the Interstate Commerce Act.

After the suit was brought and the answer of the Commission was filed it was amended to allege, what is now undisputed, that because of the failure to carry through negotiations for the acquisition of the stock of the Arrow Carrier Corporation the applicant petitioned the Commission for a modification of its order to exclude that carrier from the merger authorized and that was done by order entered June 8, 1942. All phases of this controversy which resulted from the inclusion of Arrow in the authorized consolidation are, therefore, eliminated and we will proceed as though Arrow had never been a party.

The United States answered by confessing error and praying for a decree setting aside the Commission's order. The other defendants answered

joining issue and praying that the complaint be dismissed. Their right so to do was not affected by the confession of error by the United States and the issues thus raised are still open. 28 U. S. C. A. sec. 45 (a); *Interstate Commerce Commission v. Oregon-Washington R. R. Co.* 288 U. S. 14.

As we have found that the evidence was sufficient to support the findings of the Commission our further review must be confined to determining whether the order is in conformity to the applicable law. *Virginian Ry. v. United States*, 272 U. S. 658; *Assigned Car Cases*, 274 U. S. 564; *Oregon-Washington R. & Nav. Co. v. United States* 47 E. (2) 250. It follows, of course, that the remaining question is whether the findings provide adequate support for the order even though they do not negative the possibility that the merger will not be in accord with all the provisions of the antitrust statutes as they have been construed.

Considerable light will be thrown on this problem at once by noticing the plain fact that while the Antitrust Acts and the Interstate Commerce Act are designed to bring about the conduct of business for the common good the former are also penal and are aimed at the evils of monopolies as such which unreasonably restrain trade or business while the latter, though it does not disregard such evils, is primarily concerned with creation and maintenance of adequate transportation service to the public. Providing such adequate service comes, of course, within the realm of trade or business and it is self-evident that the consolida-

tion of the instrumentalities by which it is accomplished may create monopolies and consequent restraints which would be unreasonable, and therefore unlawful, if the antitrust laws are given paramount effect in every instance. We think it equally obvious that there may at times be at least an apparent conflict in the administration of these statutes. What will best serve the public interest by way of adequate transportation facilities may not leave the business so free from restraint due to monopoly that it can justly be said that such restraint would be unreasonable were elimination of that the primary objective. It may be that reasonableness is a term sufficiently elastic, since it is dependent upon all the relevant circumstances in each instance, that the proper satisfaction of the need for adequate public transportation service would in and of itself prevent what incidental restraint of trade flowed from it from being unreasonable. We need not so decide now on broad principles, however, for we think Congress has made it plain in sec. 5 (11) of the Interstate Commerce Act [49 U. S. C. A. § 58] that it recognized the inherent possibility that orders by the Commission made within its powers and in discharge of its duty to further the creation and maintenance of transportation facilities in the public interest under the Act might not always be outside the field of restraints made unlawful by the antitrust statutes as construed in respect to restraint of commerce per se.

Sec. 5 of Title 49 U. S. C. A. provides that:

The carriers affected by any order made under the foregoing provisions of this sec-

tion and any corporation organized to effect a consolidation approved and authorized in such order are relieved from the operation of the "antitrust laws," as designated in section 12 of Title 15, Commerce and Trade, and of all other restraints or prohibitions by law, State, or Federal, in so far as may be necessary to enable them to do anything authorized or required by any order made under and pursuant to the foregoing provisions of this section.

The import of this is that the Commission, when acting with due regard for the public interest, which certainly requires it when passing upon proposed consolidations of carriers to give adequate consideration to such features as the maintenance of desirable competition and avoidance of hampering restraints, may, and should, be guided by the scope and purpose of the Interstate Commerce Act and that if, as it has in this instance, it has properly interpreted that statute and applied it correctly to the facts proved and found its order is valid. The provision that those who act in reliance upon and in conformity to such an order are not subject to the provisions of the antitrust laws designated, or to "other restraints or prohibitions by law" makes that conclusion inescapable.

That the Commission had the authority under the Interstate Commerce Act to enter the order it made on adequate evidence and in furtherance of the public interest cannot be doubted. Public interest is a proper standard in that it embraces in respect to public transportation service what is adequate, economical, efficient, necessary, and

therefore appropriate to serve the public need. *New York Securities Corp. v. United States*, 287 U. S. 12. Such changes in the Transportation Act of 1920 as were brought about by the Emergency Railroad Transportation Act of 1933 kept this standard of action fully applicable. *Texas v. United States*, 292 U. S. 522. The Motor Carrier Act of 1935 and the Transportation Act of 1940 applied like principles to the regulation of common carriers by motor vehicle.

What is needed for adequate service is a matter for the Commission to decide and it is likewise free to decide what amount of competition is in furtherance of the public interest and what is not. It is not bound to preserve or foster competition to a degree that will not best serve the public interest from the standpoint of adequate public transportation service and whether competition as such is adequate or not must depend upon its effect in furtherance of the attainment of the ends Congress sought to accomplish under the Interstate Commerce Act administered by the Commission.

Nor does the fact that, after this consolidation there will be no other one carrier by motor vehicle in competition with the applicant throughout the whole territory it serves prevent the making of the order. That is of course a factor to be considered, as it was, by the Commission in determining what is in the public interest just as are all the other pertinent factors and is to be given such weight in its final decision as the Commission, in its informed judgment and with due regard for all the evidence decides it should have. We can-

not review the weight of the evidence or the wisdom of the order. *New England Divisions Case*, 261 U. S. 184, 204.

The order authorizing the issuance of securities required to finance the consolidation was also based on adequate findings amply supported by the evidence. It follows that that order is likewise to be given effect.

Injunction denied and complaint dismissed.

HARRIE B. CHASE,

*U. S. Circuit Judge.*

WOOLSEY,

SAMUEL MANDELBAUM,

*U. S. District Judges.*

Dated Dec. 8, 1942.

United States District Court for the Southern  
District of New York

D Civil Action Nos. 18-116

MCLEAN TRUCKING COMPANY, INC., PLAINTIFF

v.

UNITED STATES OF AMERICA AND INTERSTATE COM-  
MERCE COMMISSION, ET AL., DEFENDANTS

Before CHASE, C. J., and WOOLSEY and MANDEL-  
BAUM, D. JJ.

#### FINDING OF FACTS

1. This case was heard on the pleadings and on the record of the proceedings before the Interstate Commerce Commission; its findings and decision thereon.

2. The plaintiff is a common carrier by motor vehicle in competition with one or more of the defendant common carriers by motor vehicle in part of the territory involved.

3. The facts found and reported by the Commission were based on substantial evidence and are adopted as the facts by this court.

#### CONCLUSIONS OF LAW

1. The order approving the proposed consolidation was made by the Commission in accordance with the facts and the applicable law and is valid.

2. The order approving the proposed issuance of securities in furtherance of the consolidation was made by the Commission in accordance with the facts and the applicable law and is valid.

3. The injunction should be denied and the complaint dismissed.

HARRIE B. CHASE,

*U. S. Circuit Judge.*

WOOLSEY,

SAMUEL MANDELBAUM,

*U. S. District Judges.*

Dated Dec. 8, 1942.

IN THE  
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, A. D. 1943

**No. 31**

McLEAN TRUCKING COMPANY, INC., THE SECRETARY OF AGRICULTURE OF THE UNITED STATES, AND AMERICAN FARM BUREAU FEDERATION,

*Appellants,*

*vs.*

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ASSOCIATED TRANSPORT, INC., ARROW CARRIER CORPORATION, BARNWELL BROTHERS, INCORPORATED, CONSOLIDATED MOTOR LINES, INCORPORATED, HORTON MOTOR LINES, INCORPORATED, MCCARTHY FREIGHT SYSTEM, INC., M. MORAN TRANSPORTATION LINES, INC., SOUTHEASTERN MOTOR LINES, INCORPORATED, TRANSPORTATION, INCORPORATED, THE TRANSPORT COMPANY, KUHNS, LOEB & COMPANY, BARNWELL WAREHOUSE & BROKERAGE COMPANY, BROWN EQUIPMENT & MANUFACTURING COMPANY, CONGER REALTY COMPANY, AND SOUTHERN NEW ENGLAND TERMINALS, INC.,

*Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

**BRIEF FOR AMERICAN FARM BUREAU FEDERATION,  
APPELLANT.**

MARTIN BURNS,

*Attorney for*

*American Farm Bureau  
Federation, Appellant.*

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### Argument:

1. The Court erred in holding that the order of the Commission was valid notwithstanding the fact that the Commission in finding whether the proposed transaction would be "consistent with the public interest" did not consider the effect of the proposed transaction in the light of the provisions and policies of the Anti-trust laws as well as the effect of the proposed transaction upon adequate transportation service to the public and the preservation of the inherent advantages of motor carrier transportation..... 5.

2. The Court erred in that it did not consider and determine the important public questions under Section 5(2)(b) of the Interstate Commerce Act arising from the facts with reference to the relationship between Arrow Carrier Corporation, Kuhn, Loeb & Company, Transport Company, Inc., and Associated Transport, Inc. 15

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IN THE

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McLEAN TRUCKING COMPANY, INC., THE SECRETARY OF AGRICULTURE OF THE UNITED STATES, AND AMERICAN FARM BUREAU FEDERATION,

*Appellants,*

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UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ASSOCIATED TRANSPORT, INC., ARROW CARRIER CORPORATION, BARNWELL BROTHERS, INCORPORATED, CONSOLIDATED MOTOR LINES, INCORPORATED, HORTON MOTOR LINES, INCORPORATED, McCARTHY FREIGHT SYSTEM, INC., M. MORAN TRANSPORTATION LINES, INC., SOUTHEASTERN MOTOR LINES, INCORPORATED, TRANSPORTATION, INCORPORATED, THE TRANSPORT COMPANY, KUHN, LOEB & COMPANY, BARNWELL WAREHOUSE & BROKERAGE COMPANY, BROWN EQUIPMENT & MANUFACTURING COMPANY, CONGER REALTY COMPANY, AND SOUTHERN NEW ENGLAND TERMINALS, INC.,

*Appellees.*

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF NEW YORK.

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BRIEF FOR  
AMERICAN FARM BUREAU FEDERATION,  
APPELLANT.

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## PRELIMINARY STATEMENT.

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The American Farm Bureau Federation is a corporation not for profit, organized under the laws of the State of Illinois. Its membership represents more than one-half million farm families in forty states of the United States. It has substantial membership in the states along the Atlantic seaboard and in the South, the territory served by the motor carriers involved in this proceeding, and many of its members are served by the motor carriers, parties to the proposed merger herein, or by their competitors. The Federation is organized, among other purposes, to promote, protect and represent the business, economic, social and educational interests of the farmers of the nation. It endeavors to promote the interests of its members and of farmers generally in the maintenance of low-cost transportation of farm products and farm supplies. It is committed to the support of the national policy of effective competition in the transportation industry. The American Farm Bureau Federation petitioned and was granted leave to intervene in and become a party to the present proceeding before the Interstate Commerce Commission (R. 494). As a party to the proceeding before the Interstate Commerce Commission and pursuant to Section 212 of the Judicial Code (28-U.S.C. 45a) and Rule 24 of the Rules of Civil Procedure for the District Courts of the United States, it filed its motion to intervene as a party plaintiff in the proceedings in this matter before the District Court of the United States for the Southern District of New York (R. 73). It joined with the original plaintiff and the Secretary of Agriculture of the United States in the appeal to this Court.

### **Official Report of Opinion Below.**

The official report of the opinion delivered in this matter in the Court below entitled, *McLean Trucking Co. Inc. v. United States, et al*, is found in 48 F. Supp. 933.

### **Jurisdiction, Statement of the Case, Specification of Errors to be Urged.**

For the purposes of this brief, the American Farm Bureau Federation as an intervening plaintiff in the original proceedings and Appellant here adopts the statements found in the brief for the Secretary of Agriculture of the United States and in the brief for the original plaintiff with respect to the proceedings and opinions below, the jurisdiction of this Court, the statement of the case and the specifications of the errors to be urged.

### **Scope of Argument.**

This Appellant further adopts the brief for the Secretary of Agriculture of the United States with respect to the arguments presented upon the several assignments of error but desires to submit the following separate and additional argument upon two assignments of error, namely:

1. The Court erred in holding that the order of the Commission was valid notwithstanding the fact that the Commission in finding whether the proposed transaction would be "consistent with the public interest" did not consider the effect of the proposed transaction in the light of the provisions and policies of the Antitrust laws as well as the effect of proposed transaction upon adequate transportation service to the public and the preservation of the inherent advantages of motor carrier transportation.

2. The Court erred in that it did not consider and determine the important public questions under Section 5(2)(b) of the Interstate Commerce Act arising from the facts with reference to the relationship between Arrow Carrier Corporation, Kuhn, Loeb & Company, Transport Company, Inc., and Associated Transport, Inc.

### **Summary of Argument.**

The Court and the Interstate Commerce Commission erred in determining the weight to be given to the preservation of competition as a factor in determining "public interest." The Commission may not approve a merger or consolidation of motor carriers which results in the elimination of substantial competition unless it finds upon the basis of substantial evidence that the elimination of such competition is necessary in order to provide an adequate transportation system in the area involved.

The substantial stock interest which would have accrued to Kuhn, Loeb & Company under the merger agreement would constitute a railroad affiliation inconsistent with the public interest. The Court should construe Section 5(2)(b) of the Interstate Commerce Act for the guidance of the Commission in any further proceedings in the present case or any similar cases hereafter brought.

## ARGUMENT.

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### I.

The Court erred in holding that the order of the Commission was valid notwithstanding the fact that the Commission in finding whether the proposed transaction would be "consistent with the public interest" did not consider the effect of the proposed transaction in the light of the provisions and policies of the Anti-trust laws as well as the effect of the proposed transaction upon adequate transportation service to the public and the preservation of the inherent advantages of motor carrier transportation.

The Interstate Commerce Commission, in its report in this proceeding, asserted that Congress had vested in the Commission discretionary authority to permit or refuse mergers of competing motor carriers. The Commission took the position that such discretionary authority had been placed wholly within the judgment of the Commission by the provisions of Section 5 of the Interstate Commerce Commission Act (49 U.S.C.A. 5). The Commission's order was based upon this interpretation of the statute. Paragraph 2 of Section 5 of the Interstate Commerce Commission Act provides for the consolidation and merger of carriers where the proposed transaction is within the scope of the section. It requires the Commission to find that the proposed transaction is consistent with the public interest before the Commission may approve the transaction. Paragraph 11 of Section 5 provides that the carriers, their officers and employees and any other persons "par-

participating in a transaction approved or authorized under the provisions of this section shall be and they hereby are relieved from the operation of the Antitrust laws and their restraints, limitations and prohibitions of law, federal, state or municipal, insofar as may be necessary to enable them to carry into effect the transactions so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, \* \*." The Commission in effect held that under this statutory authority it could approve transactions which result in substantial restraints of competition under the Antitrust laws if the Commission, in its discretion, was of the opinion that the transaction would be consistent with the public interest. The Court upheld this interpretation of the authority of the Commission. In taking the position that the Congress has placed the granting or denying of authority for these consolidations or mergers wholly within the judgment of the Commission where the transaction will be consistent with the public interest and that the Commission is free to decide what amount of competition is in furtherance of the public interest and what is not, the Commission and the Court have overlooked certain essential elements of public interest as defined by the Court and certain criteria laid down by the Transportation Act of 1940. The Commission and the Court seem to follow the policies prescribed for the consolidation of railroads under the Transportation Act of 1920. They did not take into consideration the changes made by the Transportation Act of 1940 and the national transportation policy as declared by Congress in enacting the Transportation Act of 1940. Nor did they take into consideration the historical development of the applicable laws and the manner in which the present statute differs from former provisions relating to railroad consolidations.

Historically, the Cullom Act of February 4, 1887, was the first general Federal law providing for the regulation of charges by railroads. The enactment of this legislation was significant as an expression of the popular feeling at that time. It resulted in no small measure from the demands of midwestern farmers, as expressed by the Granger movement. This Act sets forth prohibitions against unreasonable rates, unjust discrimination, undue preference and undue prejudice and the charging of a greater amount under substantially similar circumstances and conditions for a short haul than for a longer haul over the same line in the same direction, the shorter being included in the longer. It was essentially an anti-discrimination statute. *Interstate Commerce Acts, Anno*, Vol. 1, page 75. A few years later, on July 2, 1890, the Sherman Act (15 U.S.C.A. 1) was enacted. This statute was intended to secure equality of opportunity and to protect the public against evils commonly incident to monopolies and these abnormal contracts and combinations which tend directly to suppress the conflict for advantage called "competition"—the play of the contending forces ordinarily engendered by an honest desire for gain. *United States v. American Tobacco Company*, 221 U. S. 106.

The rule of competition prescribed by the Sherman Act was applicable to railroads and this court held numerous attempts to consolidate railroads and eliminate competition to be in violation of the Sherman Act. *United States v. Trans-Missouri Freight Association*, 166 U. S. 290; *United States v. Joint Traffic Association*, 171 U. S. 505; *Northwestern Securities Co. v. United States*, 193 U. S. 197. From its enactment in 1890 until the adoption of the Transportation Act of 1920, the Sherman Act was applicable to consolidations by railroads in restraint of competition. The Commerce Act as amended was designed to protect the public against discrimination and unreasonable charges.

During World War I, the railroads were taken over and operated by the United States Government. With the return of the railroads to private control and operation, the Transportation Act of 1920 was enacted. This Act introduced a new railroad policy into Federal legislation. Theretofore efforts of Congress had been directed mainly to the prevention of abuses, particularly those arising from excessive or discriminatory rates. The 1920 Act sought to insure also adequate transportation service. *Akron C. & Y. R. Co. v. United States*, 261 U. S. 184. In addition to provisions designed to assure railroads adequate revenue to enable the whole transportation system to be maintained and the assistance provided weaker roads through the recapture provisions, Section 5 of the Interstate Commerce Act was rewritten to permit the combination and consolidation of carriers where the Commission found such consolidation to be in the "public interest." The Commission was instructed to prepare a plan for the consolidation of railway properties of the continental United States into a limited number of systems. The Congress directed, however, that "under such plan competition shall be preserved as fully as possible." Proposed consolidations thereafter were required to be in harmony with and in furtherance of the plan of consolidation approved by the Commission. This 1920 Act further provided that carriers entering into any such consolidation approved by the Commission were relieved from the operation of the Antitrust laws insofar as necessary to enable them to carry out the consolidation. But these consolidations were required to be in the "public interest." It was contended that this requirement that the consolidation be in the public interest was invalid as a delegation of legislative authority because the criteria were uncertain. This court, however, held that the term "public

interest" as used in the Transportation Act of 1920 was "not a concept without ascertainable criteria but has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency and to appropriate provision and best use of transportation facilities." *New York Central Securities Corporation v. United States*, 287 U. S. 12 at 25.

By the Transportation Act of 1940, the provisions for consolidation and merger of all carriers were rewritten and combined into one section, namely, Section 5. (49 U.S.C.A. 5.) In general, the provisions of the present Section 5 follow Section 213 (49 Stat. 556) of the Motor Carrier Act of 1935 (with such changes as are necessary to adapt the language to all types of carriers) more closely than they follow Section 5 of the Transportation Act of 1920. The provisions of the Transportation Act of 1920 relating to the consolidation of railroads were omitted from the revised Act. The provisions of Section 5 relating to consolidation of carriers as rewritten, having omitted the provisions for a plan of consolidation for railroads, it certainly cannot now be argued that Congress, in the enactment of this statute, intended to inaugurate a plan for the consolidation of motor carriers. When Congress rewrote Section 5 of the Interstate Commerce Act to permit the consolidation of carriers of all types where such consolidation was in the public interest, Congress must have had in mind the construction which the courts had placed upon the phrase "in the public interest." We must now read into this phrase the criteria laid down by this court in *New York Central Securities Corporation v. United States*, 287 U. S. 12 at 25 that a consolidation is in the public interest when it is essential (1) to adequacy of transportation service; (2) to the essential conditions of economy and efficiency in the transportation service in-

volved; and (3) the appropriate provisions and best use of transportation facilities. But these do not constitute all the matters that must be considered in determining the "public interest."

In determining the powers and authority of the Interstate Commerce Commission to approve consolidation of motor carriers, all of the relevant statutes as interpreted by the courts must be taken into consideration. Statutes in *pari materia* are to be taken together. These include not only Section 5 of the Interstate Commerce Act but the declaration of the National Transportation Policy as set out in the preamble of the Transportation Act of 1940, and the Sherman Act. In enacting the Transportation Act of 1940, the Congress declared:

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, *so administered as to recognize and preserve the inherent advantages of each*; to promote safe, adequate, economical, and efficient service *and foster sound economic conditions in transportation and among the several carriers*; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions,—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of

the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy" (54 Stat. 899). (*Italics supplied*).

The inherent advantages of each mode of transportation which are to be recognized and preserved are competitive advantages. Clearly the Congress indicated its desire that these competitive advantages be retained. In this policy, Congress directed the Commission to "foster sound economic conditions in transportation and among the several carriers." From the date of the enactment of the Sherman Law, the maintenance of competition has been deemed essential for sound economic conditions in any industry, including the transportation industry. The only exceptions, so far as carriers were concerned, were under the Transportation Act of 1920, where upon a finding of the criteria required for being in the public interest, competition might be restrained. In the light of all relevant statutory provisions and the decisions construing them, it seems obvious that the Interstate Commerce Commission has not been granted authority or power to approve a consolidation or merger of motor carriers which involves the elimination of substantial competition unless the Commission finds that such merger or consolidation and the elimination of such competition is necessary in order to provide an adequate transportation service. There was no such finding in this case.

The consolidation and merger here proposed will result in the elimination of 13,546 miles of duplicating routes. The Commission found (R. 22) that substantial competition exists between certain of the carriers involved and consummation of the instant transactions would eliminate such competition. There is no evidence whatsoever and no finding that the elimination of this competition is neces-

sary in order to provide an adequate transportation system in the area. In fact, there could be no such finding on this record as all of the evidence is to the contrary.

This case presents a situation in which eight of the largest carriers serving a very substantial portion of the United States are attempting to unite into one gigantic combine. There will be no nucleus of strong competitors around whom a competitive system might be built, in this area. In fact, the carriers, parties to this proposed consolidation, have in most instances conditioned their acceptance of the consolidation upon the inclusion of their principal competitors. The effect of such a huge consolidation of the largest and, in most cases, the most profitable carriers in the area, upon competition is obvious. Smaller carriers cannot possibly compete with the bargaining power of such a combine. While the Commission suggests that if it should develop that anything approaching a monopoly has resulted in the territory affected from the formation and operation of this consolidated system, new carriers might be granted certificates to operate in the territory, it is obvious that such a remedy is of small value. Experience demonstrates that the expense involved in attempting to obtain certificates and the delays which would be encountered by any small concern which might attempt to obtain operating rights within the territory served by this huge combination would be such that the small carrier would be completely discouraged or bankrupt long before authority to operate might be obtained. ~~The Commission's finding that substantial competition would remain, is, it is submitted, not supported by the evidence.~~

The Commission, in effect, held and the District Court affirmed, that the National Transportation Policy is one

of regulated monopoly insofar as motor carriers are concerned. While the courts are not primarily concerned with the formulation of national policies, the wisdom of a policy based on competition is well illustrated by the recent history of our railroads, which the Commission would have motor carriers follow. Under regulation and with the direction, as set forth in the Transportation Act of 1920, to provide an adequate railway service, there was, nevertheless, no development of railway service. It is a matter of common knowledge that few, if any, improvements were made. It was not until the development of competition from automobiles and motor trucks and waterways that the railroads began to improve their service and schedules. They were shocked out of their complacency by the inroads upon their revenues made by this new source of competition. Improvements in their service were made only when it became necessary to meet this competition.

There is no group more concerned with the character, the adequacy, and particularly the cost, of transportation than the farmers of the country. The farmer is both producer and consumer. He pays the freight from the farm to the market on everything which he produces. He cannot pass it on to the consumer as industry often is able to do. The cost of transportation is added to the price of everything that he must buy. The cost of transportation is the highest single service charge that the farmer has to pay. Low-cost public transportation can be assured only through competition, competition not only between different agencies of transportation but within each field of transportation.

Transportation by motor carrier cannot be likened to transportation by rail. Motor carriers use highways which

are built, improved and maintained at public expense. The low-cost transportation which these highways make possible should not be turned over to private corporations for monopolistic use, either through certificates of convenience and necessity, merger of strong competing lines, or any other governmental device. Competition between carriers and particularly between motor carriers is essential and necessary to preserve low-cost transportation over the highways for agriculture, industry and the consuming public, who bear the expense of these highways.

It is respectfully urged that the Commission and the District Court, in holding that Congress by the enactment of the revised Section 5 of the Interstate Commerce Act, has placed the granting or denying of authority for these consolidations or mergers wholly within the judgment of the Commission, have not correctly interpreted the law. Definite criteria are provided and must be satisfied before a consolidation or merger may be authorized and the parties relieved from the Antitrust laws. Under the law, before the Commission could approve the consolidation and merger here involved and the elimination of competition resulting therefrom, the Commission was required to find that the elimination of such competition was necessary in order to provide an adequate transportation system in the area involved. There was no such finding and the findings and evidence in this case therefore are not sufficient to support the order of the Commission.

## II.

The Court erred in that it did not consider and determine the important public questions under Section 5 (2) (b) of the Interstate Commerce Act arising from the facts with reference to the relationship between Arrow Carrier Corporation, Kuhn, Loeb & Company, Transport Company, Inc., and Associated Transport, Inc.

Upon the hearing before the Interstate Commerce Commission, it was urged that the acquisition of Arrow Carrier Corporation by the applicant, Associated Transport, Inc., would result in Kuhn, Loeb & Company, a banking and investment firm with an established history of affiliation with railroad companies, obtaining a substantial interest in the applicant. The evidence showed and the Commission in its report (R. 36) states that upon consummation of the proposed transactions, Kuhn, Loeb & Company, through a subsidiary, would own approximately 13% of applicant's outstanding preferred stock and approximately 9.5% of applicant's outstanding common stock. It was contended that because of the relationship of Kuhn, Loeb & Company with certain railroad companies, this stockholding by Kuhn, Loeb & Company would be in violation of Section 5 (2) (b) of the Interstate Commerce Act (49 U.S.C.A. 5) which in part provides:

"If a carrier by railroad subject to this order, or any person which is controlled by such a carrier or affiliated therewith, within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use

service by motor vehicle to public advantage in its operations and will not unduly restrain competition."

The Commission found (R. 37) that the applicant, Associated Transport, Inc., was not, and upon consummation of the transactions as proposed would not be, affiliated with any railroad. In its report the Commission in dealing with this point states that there is no allegation that Kuhn, Loeb & Company controls any railroad, but because of its relationship with railroads it is contended that possession by Kuhn, Loeb & Company of a financial interest in applicant would be contrary to the public interest, that it would result in restraining competition between the carriers involved and railroads and that applicant would be affiliated with a railroad within the meaning of Section 5 (6). The Antitrust Division of the Department of Justice in its Petition for Reopening and Rehearing (R. 475) offered proof showing the definite relationship of Kuhn, Loeb & Company with the Baltimore and Ohio Railroad Company and the Pennsylvania Railroad Company. This offer of proof was rejected and the Commission approved the consolidation or merger including the acquisition of Arrow Carrier Corporation by the applicant, Associated Transport, Inc. Subsequently, at the request of the applicant, by a supplemental order, the Commission vacated its order of March 16, 1942, in part, and authorized the consolidation or merger without the inclusion or acquisition of Arrow Carrier Corporation. When the matter was before the District Court, the Court referred to the order of the Commission excluding Arrow Carrier Corporation from the merger and proceeded to consider the matter as though Arrow Carrier Corporation had never been a party. However the time allowed by the Commission for carrying the consolidation into effect had not then expired. The Commission by its original

order and by the supplemental order had indicated that it would approve the consolidation and merger either with or without the inclusion of Arrow Carrier Corporation.

This case and the previous proceeding before the Interstate Commerce Commission involving these same motor carriers, among others (Transport Company—Control, 36 M.C.C. 61), represents the first attempt on the part of motor carriers to merge into a gigantic concern, with governmental approval. The action taken in this case will serve as a guide and outline for future attempts to merge motor carriers. The influence of financially powerful banking firms over the affairs of the corporations of which they own a part is greatly in excess of their proportionate stockholdings. The evils which attended the participation of these concerns in railroad transportation are well known. Section 5 of the Interstate Commerce Act, and particularly the provisions of paragraph 2 (b) and paragraph 6 thereof, were designed by Congress to avoid a recurrence of such evils in the motor carrier field. Older forms of transportation, well established in their field and eager to safeguard their position and preserve their investment, attempt to control and stifle new competitive carriers. Congress, in guarding against such a suppression of competition, provided that railroad carriers or concerns affiliated therewith should be permitted to participate in the ownership of motor carriers only where there is a finding that the transaction proposed will be consistent with the public interest and will not unduly restrain competition. Section 5 (2) (b). In paragraph 6 of Section 5, it provided a broad definition of affiliation with a carrier, stating:

"For the purposes of this section a person shall be held to be affiliated with a carrier if, by reason

of the relationship of such person to such carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers or stockholders, a voting trust or trusts, a holding or investment company or companies, or any other direct or indirect means), it is reasonable to believe that the affairs of any carrier of which control may be acquired by such person will be managed in the interest of such other carrier."

It is submitted that Kuhn, Loeb & Company has such a relationship with railroad carriers as to bring the proposed original transaction here involved within the provisions of Section 5 (2) (b) of the Interstate Commerce Act. The finding of the Interstate Commerce Commission that the applicant is not, and upon consummation of the transactions as originally proposed would not be, affiliated with any railroad is contrary to the evidence.

It is obvious that if banking houses or other concerns having substantial financial interests in railroad corporations are permitted to acquire an interest in motor carriers serving the same area, their influence may be used to protect the investment in the railroad properties and to retard and stifle competition with the railroads by the motor carriers. As a result, competition between railroads and motor carriers in the area would be restrained or destroyed. This in effect would amount to cartelization of motor vehicle and railroad transportation in the area. The interest of farmers and of the public generally in maintaining competition in the transportation field has been heretofore pointed out. Any action by the Interstate Commerce Commission or by any other governmental agency which results in or tends toward cartelization of

motor vehicle and railroad transportation\* would seem to be directly contrary to that provision of the National Transportation Policy which directs that the regulation of all modes of transportation shall be so administered "as to recognize and preserve the inherent advantages of each." The interest of the public in the instant case is such that it is urged that the court should follow the rule laid down in *United States v. Trans-Missouri Freight Association*, 166 U. S. 290, and followed in *Southern Pacific Terminal Company v. Interstate Commerce Commission*, 219 U. S. 498, and construe Section 5 (2) (b) of the Interstate Commerce Act for the guidance of the Commission in any further proceedings in the present case or in any similar cases hereafter brought.

WHEREFORE, it is urged that the decision below should be reversed and that the Court should order such other and appropriate relief as to the Court may seem just and proper.

Respectfully submitted,

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October 19, 1943.

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1943.

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No. 31.

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McLEAN TRUCKING COMPANY, INC., THE SECRETARY OF AGRICULTURE OF THE UNITED STATES, AND AMERICAN FARM-BUREAU FEDERATION, *Appellants*,

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ASSOCIATED TRANSPORT, INC., BARNWELL BROTHERS, INC., ET AL., *Appellees*.

---

Appeal From the District Court of the United States for the Southern District of New York.

---

**BRIEF FOR APPELLANT McLEAN TRUCKING  
COMPANY, INC.**

---

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COMPANY, INC.

—  
OPINION BELOW.

JURISDICTION.

QUESTIONS PRESENTED.

STATUTES INVOLVED.

STATEMENT OF THE CASE.

McLean Trucking Company, Inc., one of the appellants herein, adopts the statements contained in the Brief of the Secretary of Agriculture relative to the above topics.

## SUMMARY OF ARGUMENT.

McLean Trucking Company, Inc., is an independent motor carrier operating in competition with some of the principal carriers, parties to the proposed merger. The McLean Trucking Company, Inc., instituted the suit below because of the material effect the proposed merger would have upon its business as an independent motor truck operator. In the case below the Secretary of Agriculture and the American Farm Bureau Federation intervened as parties plaintiff, and the United States of America confessed error. In the appeal now before this court, the interests of the McLean Trucking Company, Inc., are likewise identified with the position taken by the Secretary of Agriculture and the American Farm Bureau Federation. Therefore, the McLean Trucking Company, Inc., adopts the brief of the Secretary of Agriculture as also expressing its views on the vital issues before this Court.

The McLean Trucking Company, Inc., desires, however, to emphasize the effect of the proposed merger of powerful, competing motor carriers upon the independent motor truck carriers operating in the same territory.

## ARGUMENT.

Differences in the policy of Congress respecting rail carriers and motor carriers are apparent from a study of the legislative history of regulation of rail carriers and of motor carriers. Not only is the regulation of motor carriers a new departure, introduced in 1935, nearly fifty years after the regulation of railroads had begun, but it is apparent that Congress contemplated less rigid regulation of motor carriers than of rail carriers.

A motor carrier franchise does not involve the same elements of compulsion as a railroad franchise. Railroad rights-of-way, being regarded as devoted to the public interest, cannot be abandoned without permission of the Interstate Commerce Commission. (Interstate Commerce Act,

Section 1 (18)), whereas a motor carrier can abandon any part or all of its routes at any time that it sees fit.

In the case of rail carriers the Interstate Commerce Act makes it mandatory that they establish through routes with other rail carriers and provide just and reasonable rates, fares, charges and classifications applicable thereto, and establish just, reasonable and equitable divisions thereof which shall not unduly prefer or prejudice any of the participating carriers (Sections 1 (4), 15 (1), (3)); whereas, in the case of common carriers of property by motor vehicle the statute does not make it mandatory but only permissive to establish through routes and rates. (Section 216 (c).)

If through routes and joint rates are established by motor carriers, the Commission has power to regulate them and prescribe equitable divisions, but it has no power to initiate the creation of joint rates or to prevent their cancellation. The testimony in the record with respect to interchange of traffic (in spite of the inadequacies of the testimony) shows the importance to the operations, and even the existence, of small independent carriers, of through routes and equitable divisions of joint rates.

Under the Motor Carrier Act the Commission is not even permitted to forbid rate practices which discriminate against other carriers, but only to forbid discriminations against shippers. This result follows from Section 216 (d) of the Interstate Commerce Act (49 U. S. C., Sec. 316 (d)). Motor carriers can refuse to establish through routes and joint rates with other motor carriers, and can even discriminate against other motor carriers in their rate schedules. The Commission, therefore, must give more consideration to factors of competition than in the case of railroad mergers. Nevertheless, there is no indication in the Commission's report that it made any differentiation between the two types of carriers.

**The Motor Carriers, Parties to the Merger, Were Selected Because of the Strong Position Which They Occupied in the Motor Carrier Field Along the Atlantic Seaboard.**

The motor carriers involved in the proposed merger were selected by the Chairman of the Board, and President of Associated Transport, Inc., for inclusion in the merger because of their strong position in the industry. This is not a merger of small lines to form one that can compete on an even basis with existing lines. It is a merger of the largest existing lines in order to form a veritable behemoth in the trucking field. Mr. Horton frankly testified that the parties to the merger were chosen because of their strength (R. 513), and that he expected Associated Transport to make employment contracts with the key men in the various merging companies so that they might not be in a position to take part in competitive operations (R. 522-523-544).

The exhibits which the applicant prepared and offered did not show the volume of freight carried by any of the alleged competing lines between points served by the combine (R. 637-1052), and did not give any indication of the number of vehicles operated by them, or the proportion of their operations which were in other sections of the country than those served by the combine (R. 1153). When an exhibit was introduced purporting to show the revenues of carriers operating between various points, it showed not the revenue of each carrier from traffic between those points, but the revenue for the total operation of the companies (R. 1191-1192), even though a large part of those operations might be in areas outside that involved in the proposed unification (R. 1192).

The companies, parties to the merger, are dominant in their separate territories. For instance, the combined revenues of McCarthy and Consolidated are three times greater than any single company that will be left in the area, and equal to that of the five largest remaining companies combined (R. 1302).

The effects which the combine's power would have, and the way in which it would be used, were not left to inference. Offers of proof on the subject were made and rejected by the Commission. Because of the absence of any evidence respecting the actual volume of business of other carriers between points in the area affected by the unification, the Antitrust Division of the Department of Justice requested the Commission, before the close of the hearings, to require that the lines which are parties to the merger and certain other lines furnish information concerning the tonnage interchanged with each connecting line in New York and other major interchange points during a representative period (R. 1356-1367). In spite of definite testimony that the tendency of the merger would be to deprive independent carriers of a substantial portion of such interchanged traffic (R. 1203-1253), the Commission refused to grant the motion (R. 35).

One of the major reasons advanced in support of the merger is that after the merger has been accomplished, shippers and receivers of freight, located in the vast industrial area covered by the combined operations of the parties to the merger, will be offered a service which, if accepted, will eliminate the necessity of the need to patronize any other carrier (R. 524-534). The shippers and receivers of freight will be told that it is no longer necessary for their shipments to be delayed due to the necessity of interchange. No longer will these shippers and receivers of freight need to have trucks from various motor carrier companies calling at their facilities for traffic. Associated Transport, Inc., will serve directly all points which are located on the lines of the parties to the merger throughout the vast area up and down the Atlantic Seaboard. Interchange of traffic will not be tolerated except only to the extent necessary to serve points not located on its regular routes.

Now what does this mean to independent motor carriers who, at the present time, render a direct service between points on their lines, as well as an interchange service to and from points not located on their lines in conjunction with either the motor carriers, parties to this merger, or with independent motor carriers of the type of the McLean Trucking Company, Inc.? Stated in plain language it means that these independent motor carriers, such as Appellant, will be relegated solely to the performance of single-line service between points situated on their lines, and will be deprived of the interchange traffic which now contributes a great proportion of their total revenue.

The Commission did not make a basic finding of fact that inadequate service by motor carriers exists in the area adjacent to the Atlantic Seaboard. Therefore, the Commission's authorization of the merger cannot rest on the ground that the merger is necessary if members of the shipping public are to be provided with adequate transportation service by motor vehicle. Its order rests on the theory that an improved service is promised and that economy might be forthcoming which ultimately might be reflected in the level of rates assessed for transportation service. The record is clear that elimination of interchange is the key to the promised improved service which the proponents of Associated Transport, Inc. promises to render.

**The Interstate Commerce Commission Does Not Have Power to Force Associated Transport, Inc., to Establish Through Routes and Joint Rates.**

Section 216(c) of the Interstate Commerce Act (49 U. S. C. Sec. 316(c)) does not make it mandatory that common carriers of property by motor vehicle establish through routes and joint rates with other common carriers. If through routes and joint rates are established by motor carriers, the Commission has power to regulate them, and prescribe equitable divisions thereof, but it has no power

to force the creation of through routes or to initiate the creation of joint rates, or to prevent their cancellation.

Parties to the proposed merger, at their whim or fancy, could cancel all through-route arrangements and joint rates now in effect in connection with all independent motor carriers rendering service to and from points serviced by parties to the merger and the Commission would be powerless to do anything about it, or to interfere, even though such cancellation was detrimental to the public interest and had the effect of constituting an absolute monopoly of transportation service by motor vehicle.

Under the Motor Carrier Act the Commission is not even permitted to forbid rate practices which discriminate against other carriers; it can only forbid discriminations against shippers. This result follows from Section 216(d) of the Interstate Commerce Act (49 U. S. C. Sec. 316(d)). Under the Act, therefore, parties to the merger could choose and select the independent motor carriers upon whom they desire to cast their blessings. By such a practice independent motor carriers could be quickly driven to the wall and destroyed.

**The Commission Erred in Refusing to Reopen the Proceeding to Permit Introduction of Evidence That the Purpose and Effect of the Merger was the Destruction of Independent Motor Carriers.**

The McLean Trucking Company, Inc. has no illusions about the results which will flow from this merger, if it is approved and once in the clear. We have seen that independent truckers cannot look to the Commission for succor—that guardian is powerless to aid. The apprehension of the McLean Trucking Company, Inc. is justified in the light of the Commission's denial of the petition filed by the Anti-trust Division of the Department of Justice requesting that the case be reopened in order to permit the introduction of evidence having a material bearing on the effect of

the proposed merger on independent motor carriers (R. 475 ff). The evidence which the Division sought to introduce was calculated to show "that the purpose and inevitable result of the proposed merger will be to restrict and restrain, through various means and devices, the ability of various independent motor lines to function competitively to the merged lines, thereby assuring to Associated Transport, Inc. monopolistic control of the carriage of freight by motor vehicle along the Atlantic Seaboard" (R. 479).

Another subject of the proposed testimony was that the parties to the merger had carried on a systematic plan of oppressive opposition to small independent motor carriers' applications before the Interstate Commerce Commission requesting certificates of convenience and necessity; and that the financial strength of the merged company would increase its power to obstruct applications of independent motor carriers by every procedural means at its disposal, and eliminate competition by making it beyond the financial means of small carriers to enforce their rights (R. 480).

In denying this offer of proof the Commission concluded that the proffered testimony would have no bearing on the issue as to whether the proposed merger would be "consistent with the public interest".

According to eminent legal historians the earliest conspiracies known to the law were those where the object of the conspirators was to abuse legal procedure. P. H. Winfield, *The History of Conspiracy and Abuse of Legal Procedure* (Cambridge Studies in English Legal History, Cambridge University Press, 1921) pp. 2, 109, 111. Oppressive opposition to independent motor carriers' applications for certificates of convenience and necessity by a financially strong competitor would make it beyond the financial means of small carriers to enforce their rights.

If the Commission was required to give any consideration to the preservation of competition, evidence of a purpose to stifle competition was clearly of vital importance.

The Commission is a public agency created by the Congress to administer an act which provides that:

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions:—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this act shall be administered and enforced with a view to carrying out the above declaration of policy.” (The declaration of policy in the Transportation Act of 1940 (49 U. S. C. Sec. 1).)

We think that it is self-evident from the above-stated declaration of policy that it was the duty of the Interstate Commerce Commission to go to the bottom of the matter and ascertain the effect of the proposed merger upon adequate service to the public, and upon the independent truckers to whom the public is required to look for service unless the merger is to be permitted to monopolize the field of transportation by motor carriers.

**CONCLUSION.**

It is respectfully submitted that the decree below should be reversed with directions to issue an injunction as prayed for in the petition.

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*Attorney for Appellant*  
*McLean Trucking Company, Inc.*

Dated at: Washington, D. C.,  
919 Investment Building.

October, 1943.

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# ***In the Supreme Court of the United States***

OCTOBER TERM, 1943

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No. 31

MCLEAN TRUCKING COMPANY, INC., THE SECRETARY  
OF AGRICULTURE OF THE UNITED STATES, AND  
AMERICAN FARM BUREAU FEDERATION, APPEL-  
LANTS

v.

THE UNITED STATES OF AMERICA, INTERSTATE COM-  
MERCE COMMISSION, ASSOCIATED TRANSPORT, INC.,  
BARNWELL BROTHERS, INC., ET AL.

---

APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

---

BRIEF FOR THE SECRETARY OF AGRICULTURE OF  
THE UNITED STATES

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## **OPINIONS BELOW**

The opinion of the specially constituted district court (R. 82-87), is reported in 48 F. Supp. 933. The report of the Interstate Commerce Commission (R. 8-59) appears in 38 M. C. C. 137.

## **JURISDICTION**

The final decree of the district court was entered on December 28, 1942 (R. 89). Petition for

appeal was presented and allowed on February 23, 1943 (R. 90). The jurisdiction of this Court is invoked under Section 210 of the Judicial Code, as amended, 36 Stat. 1150, 38 Stat. 220 [Urgent Deficiencies Act of October 22, 1913], (28 U. S. C. 47a), and Section 238 of the Judicial Code, as amended, 43 Stat. 938 (28 U. S. C. 345). Probable jurisdiction was noted by this Court on April 19, 1943 (R. 1517).

#### QUESTIONS PRESENTED

The ultimate question is whether an order of the Interstate Commerce Commission authorizing and approving a proposed merger of certain common carriers by motor vehicle operating along the Atlantic seaboard should be set aside. The Commission's order was entered on March 16, 1942, in a proceeding under Section 5 of the Interstate Commerce Act.

The validity of the Commission's order depends upon the determination of the following questions:

1. Whether the Commission, in making its finding under Section 5 (2) (b) of the Interstate Commerce Act that the merger would be "consistent with the public interest," erred as a matter of law in that it applied the standards and criteria applicable to a merger of rail carriers under the Transportation Act of 1920, instead of applying the standards and criteria prescribed by the Transportation Act of 1940 with respect to motor carriers.

2. Whether the Commission, in making its finding that the merger would be "consistent with the public interest," erred by failing to consider and give due weight to the antitrust and other laws of the United States.

3. Whether the Commission erred in concluding that Section 5 (11) of the Interstate Commerce Act (which provides that carriers participating in a merger approved by the Commission in accordance with the provisions of the Act are relieved from the prohibitions of the antitrust and other laws insofar as is necessary to enable them to carry into effect the merger so approved) relieved the Commission from the requirement of considering and giving due weight to the antitrust and other laws of the United States in making its finding that the merger would be "consistent with the public interest."

4. Whether the Commission erred in approving a merger of motor carriers involving the elimination of substantial competition without making a finding that the merger is necessary in order to insure adequate transportation service to the public.

5. Whether the Commission erred in approving the merger without making a finding, under the provisions of Section 5 (2) (c) (1) of the Interstate Commerce Act, as to the effect of the merger upon adequate transportation service to the public.

6. Whether the Commission erred in approving

the merger without making a finding that the effect thereof would be consistent with the National Transportation Policy (as stated in the Transportation Act of 1940) to preserve the inherent advantages of motor-carrier transportation.

7. Whether the Commission erred in failing to apply the proviso of Section 5 (2) (b) of the Interstate Commerce Act and to make a finding as to whether the merger would enable carriers by railroad to use service by motor vehicle to public advantage in their operations and would not unduly restrain competition.

8. Whether the court below erred in failing to consider the important public questions arising under Section 5 (2) (b) and in eliminating from the case all phases of the controversy resulting from the inclusion of Arrow Carrier Corporation in the authorized merger.

9. Whether there is substantial evidence to support the Commission's findings.

#### STATUTES INVOLVED

The statutes involved are Section 5 of the Interstate Commerce Act, as amended by the Transportation Act of September 18, 1940, 54 Stat. 898, 905-910 (49 U. S. C. 5); the National Transportation Policy set forth in the said Act, 54 Stat. 899; and Sections 1 and 2 of the Sherman Act of July 2, 1890, 26 Stat. 209 (15 U. S. C. 1-2). The pertinent provisions of these statutes are set forth in the Appendix hereto.

## STATEMENT

This is a suit to set aside an order of the Interstate Commerce Commission, dated March 16, 1942, authorizing and approving the merger and consolidation of eight large common carriers by motor vehicle<sup>1</sup> along the Atlantic seaboard. Associated Transport, Inc., a Delaware corporation, was organized on March 5, 1941, for the purpose of effecting the merger of those carriers. On July 25, 1941, it made application under Section 5 of the Interstate Commerce Act for authority to acquire control, through purchase of capital stock; of the eight corporations involved, and to consolidate their operating rights and properties within one

<sup>1</sup> The carriers involved were:

Arrow Carrier Corporation, Paterson, N. J. (hereinafter referred to as Arrow); Barnwell Brothers, Inc., Burlington, N. C. (hereinafter referred to as Barnwell); Consolidated Motor Lines, Inc., Hartford, Conn. (hereinafter referred to as Consolidated); Horton Motor Lines, Inc., Charlotte, N. C. (hereinafter referred to as Horton); McCarthy Freight System, Inc., Taunton, Mass. (hereinafter referred to as McCarthy); M. Moran Transportation Lines, Buffalo, N. Y. (hereinafter referred to as Moran); Southeastern Motor Lines, Inc., Bristol, Va. (hereinafter referred to as Southeastern); Transportation, Inc., Atlanta, Ga. (hereinafter referred to as Transportation). The total assets of the companies involved in the proposed merger exceeded \$9,000,000.00 and the combined operating revenues for the year ended April 30, 1941, was \$20,492,705.13 (R. 50, 145). The combined operating revenues of these companies (actual to April 30, balance estimated) for the year 1941 was \$24,275,635.04 (R. 150).

year from the date of acquisition of control<sup>2</sup> (R. 9-10).

The carriers involved in the merger serve the principal points in Massachusetts, Rhode Island, Connecticut, New York, eastern Pennsylvania, New Jersey, Delaware, Maryland, the District of Columbia, Virginia, and North Carolina. Their routes also extend to Cleveland, Ohio, Pittsburgh, Pa., Nashville, Tenn., Great Falls and McColl, S. C., and to New Orleans, La., Pensacola, Fla., via Atlanta, Ga., and Montgomery, Ala., and pass through northeastern West Virginia. They operate approximately 3,300 units of revenue equipment, and the total highway mileage covered by their regular routes is 37,884. Some of the merging carriers also operate over irregular routes in the same territory, and McCarthy conducts certain contract-carrier operations (R. 11).

The merger includes the principal motor carriers operating along the Atlantic seaboard. Substantial competition among these carriers would be eliminated by the merger (R. 22).<sup>3</sup> The new company, Associated Transport, Inc., will be the largest common carrier of property by motor vehicle in the United States (R. 33). It will have operat-

<sup>2</sup> By separate application Associated Transport, Inc., sought authority under Section 214 of the Act to issue its own stock to enable it to acquire control of the eight carriers and of four associated noncarrier companies, and to provide funds for working capital and other corporate purposes.

<sup>3</sup> Competitive service over 13,546 route miles will be eliminated as a result of the merger (R. 22).

ing revenues ten times greater than any other motor carrier in the area where it operates. There will be no motor carrier or motor carrier system competitive with Associated Transport throughout its territory (R. 33). It will have routes extending over 24,338 highway miles from New York and Massachusetts on the north, to Louisiana and Florida, on the south (R. 22, 253, 1491).

The promoters made the consummation of the merger contingent upon the inclusion therein of the principal competitors in each part of the territory served. These are Barnwell, Consolidated, Horton, McCarthy, and Moran (R. 15, 36). In New England, Consolidated and McCarthy are competitive (R. 23). Consolidated and Moran are competitive between the principal points in New York State (R. 26). Barnwell and Horton are the principal competitors in the southern region (R. 27, 28).

A more ambitious proposal for acquisition of control of 29 motor carriers, including the carriers involved in the present merger, by another applicant, The Transport Company, was disapproved by the Commission on November 15, 1940 (36 M. C. C. 61). The Transport Company is controlled, through ownership of all its outstanding stock, by Kuhn, Loeb & Company, investment bankers of New York City (R. 11). Kuhn, Loeb & Company have been for many years, and still are, bankers for the Pennsylvania Railroad Com-

pany and the Baltimore & Ohio Railroad Company, two rail carriers operating in the territories served by the motor carriers involved in the present merger (R. 36).

The Transport Company is a stockholder in Associated Transport, Inc., having received 9,000 shares of its common stock for engineering and accounting data developed in connection with the previously proposed merger which the Commission disapproved. At the date of the hearing before the Commission on the present merger, The Transport Company had representation on the Board of Directors of Associated Transport, Inc. (R. 11). The plan as approved by the Commission's order of March 16, 1942, contemplated the inclusion of the Arrow Carrier Corporation, the stock of which the Transport Company had an option to purchase (R. 12); and thereby Kuhn, Loeb & Company, through the Transport Company, would have owned 6,877 shares of preferred stock and 67,167 shares of common stock, which, after issuance of 15,000 shares of preferred stock proposed to be issued to the public, would have been 13 percent and 9.53 percent, respectively, of the outstanding shares of Associated Transport, Inc. (R. 36).

After the institution of the present suit in the District Court to set aside the Commission's order of March 16, 1942, the Commission on June 8, 1942, upon petition of Associated Transport, Inc., vacated so much of its order of March 16, 1942,

as authorized the applicant to acquire control of, and consolidate with, Arrow. On June 17, 1942, the Commission's answer was amended so as to set forth that fact. The District Court treated the case as if the inclusion of Arrow in the proposed merger had never been contemplated by the parties or approved by the Commission, and disregarded the stock interest which Kuhn, Loeb & Company still holds in Associated Transport, Inc. (R. 66, 85).

In the proceedings before the Commission, the application for approval of the merger was opposed by the Secretary of Agriculture of the United States, the Antitrust Division of the United States Department of Justice, The National Grange, Super Service Motor Freight Company, Virginia State Horticultural Society, Inc., West Virginia State Horticultural Society, Maryland State Horticultural Society, Berks-Lehigh Mountain Fruit Growers, Inc., and Appalachian Apple Service, Inc. A number of other carriers, shippers, shipper organizations, and the Lynchburg, Va., Chamber of Commerce intervened but took no definite position (R. 10). The American Farm Bureau Federation filed a petition for leave to intervene and for rehearing and reconsideration on April 12, 1942, which, with the petitions of protestants for reopening, rehearing, reargument, and reconsideration, was denied by an order of the Commission entered April 22, 1942 (R. 498).

The Commission's order of March 16, 1942, approved the merger. Acting Chairman Aitchison dissented. Commissioner Splawn also dissented, pointing out that the alleged opportunities for greater economy and efficiency of operation were altogether vague and speculative and not convincing. He also emphasized that the unification was not an end-to-end consolidation of complementary lines, as the Commission asserted (R. 48). Commissioner Patterson also dissented, objecting to the inclusion of the McCarthy contract operation, which he regarded as amounting to a grant of dual authority. He also viewed part ownership of Associated Transport, Inc., by Kuhn, Loeb & Company as contrary to the public interest (R. 49).

McLean Trucking Company, Inc., a motor carrier which competes with some of the carriers included in the merger, brought suit on May 5, 1942, in the District Court to set aside the Commission's order (R. 1). The Secretary of Agriculture of the United States and the American Farm Bureau Federation intervened as plaintiffs (R. 61, 76). The United States confessed error (R. 72). The Interstate Commerce Commission and the parties to the merger defended the Commission's order. On December 28, 1942, the District Court dismissed the complaint (R. 89).

**SPECIFICATION OF ERRORS TO BE URGED**

1. The court below erred in that it did not set aside the Commission's order upon the following grounds:

a. The Commission, in making its finding under Section 5 (2) (b) of the Interstate Commerce Act that the merger would be "consistent with the public interest," erred as a matter of law in that it applied the standards and criteria applicable to a merger of rail carriers under the Transportation Act of 1920, instead of applying the standards and criteria prescribed by the Transportation Act of 1940 with respect to motor carriers.

b. The Commission, in making its finding that the merger would be "consistent with the public interest," erred by failing to consider and give due weight to the antitrust and other laws of the United States.

c. The Commission erred in concluding that Section 5 (11) of the Interstate Commerce Act (which provides that carriers participating in a merger approved by the Commission in accordance with the provisions of the Act are relieved from the prohibitions of the antitrust and other laws insofar as is necessary to enable them to carry into effect the merger so approved) relieved the Commission from the requirement of considering and giving due weight to the antitrust and other laws of the United States in making its

finding that the merger would be "consistent with the public interest."

d. The Commission erred in approving a merger of motor carriers involving the elimination of substantial competition without making a finding that the merger was necessary in order to insure adequate transportation service to the public.

e. The Commission erred in approving the merger without making a finding, under the provisions of Section 5 (2) (c) (1) of the Interstate Commerce Act, as to the effect of the merger upon adequate transportation service to the public.

f. The Commission erred in approving the merger without making a finding that the effect thereof would be consistent with the National Transportation Policy (as stated in the Transportation Act of 1940) to preserve the inherent advantages of motor carrier transportation.

g. The Commission erred in failing to apply the proviso of Section 5 (2) (b) of the Interstate Commerce Act and to make a finding as to whether the merger would enable carriers by railroad to use service by motor vehicle to public advantage in their operations and would not unduly restrain competition.

2. The court below erred in failing to consider the important public questions arising under Section 5 (2) (b) and in eliminating from the case all phases of the controversy resulting from the

inclusion of Arrow Carrier Corporation in the authorized merger.

3. The court below erred in holding that the facts found and reported by the Commission were based upon substantial evidence and in adopting them as its own findings.

4. The court below erred in holding that the order approving the proposed consolidation was made by the Commission in accordance with the facts and the applicable law and was valid.

#### SUMMARY OF ARGUMENT

##### I

The Commission misconstrued applicable provisions of law and did not apply the appropriate statutory standards. The Commission applied the standards and criteria prescribed by the Transportation Act of 1920 with respect to the merger of rail carriers instead of applying the standards and criteria prescribed by the Transportation Act of 1940 with respect to motor carriers. The legislative history of Section 5 of the Interstate Commerce Act shows that the policies and provisions embodied in the antitrust laws are incorporated in the statutory standards and criteria applicable to the acquisition of control of motor carriers. But the Commission's construction of that section would deprive the antitrust laws of applicability except at the whim or ca-

price of the Commission. Section 5 (11), properly construed, does not relieve the Commission from applying and giving effect to the antitrust laws. That provision is addressed to carriers, not to the Commission. It merely exempts the carriers from prosecution if they comply with Commission orders. But the Commission may not properly approve a merger which would violate the antitrust laws unless it is necessary in order to provide adequate transportation service for the public.

## II

The Commission did not make the necessary findings. The Commission made no finding that existing motor-carrier services were inadequate. The Commission made no finding as to the effect of the merger upon adequate transportation service to the public, as required by Section 5 (2) (c) (1) of the Act. The Commission made no finding that the merger would be consistent with the National Transportation Policy of preserving the inherent advantages of motor transportation.

## III

Findings made by the Commission lack support in the evidence. The Commission found that the proposed unification is predominantly an end-to-end consolidation of complementary operations. The Commission found that Associated Transport, Inc., is not, and would not be, affiliated with

any railroad. These findings are not supported by evidence.

#### IV

The Commission's supplemental order, vacating in part its order of March 16, 1942, did not render moot the important public questions arising under the proviso of Section 5 (2) (b).

#### ARGUMENT

##### I

THE COMMISSION MISCONSTRUED APPLICABLE PROVISIONS OF LAW AND DID NOT APPLY THE APPROPRIATE STATUTORY STANDARDS

Under well-settled doctrine as to the scope of judicial review, an order of the Commission may be set aside by the courts for mistake of law or for failure to apply the proper statutory standards. *Interstate Commerce Commission v. Union Pacific Railroad Company*, 222 U. S. 541, 547 (1912); *United States v. Carolina Freight Carriers Corp.*, 315 U. S. 475, 488-90 (1942); *Scripps-Howard Radio, Inc., v. Federal Communications Commission*, 316 U. S. 4, 10 (1942).

A. THE COMMISSION APPLIED THE STANDARDS AND CRITERIA PRESCRIBED BY THE TRANSPORTATION ACT OF 1920 WITH RESPECT TO THE MERGER OF RAIL CARRIERS INSTEAD OF THOSE PRESCRIBED BY THE TRANSPORTATION ACT OF 1940 WITH RESPECT TO MOTOR CARRIERS.

In the case at bar the Commission misconstrued the applicable provisions of law and did not apply the appropriate statutory standards. This is strik-

ingly shown by the fact that, in dealing with a merger of motor carriers, the Commission applied the standards and criteria prescribed by the Transportation Act of 1920 with respect to a merger of rail carriers instead of applying the standards and criteria prescribed by the Transportation Act of 1940 with respect to motor carriers.<sup>4</sup> The Commission adopted and applied a policy of encouraging the consolidation of motor carriers into large and powerful systems.<sup>5</sup> The Commission asserts

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<sup>4</sup> The Commission's erroneous construction was followed by the court below:

"Public interest is a proper standard in that it embraces in respect to public transportation service what is adequate, economical, efficient, necessary, and therefore appropriate to serve the public need. *New York Securities Corp. v. United States*, 287 U. S. 12. Such changes in the Transportation Act of 1920 as were brought about by the Emergency Railroad Transportation Act of 1933 kept this standard of action fully applicable. *Texas v. United States*, 292 U. S. 522. *The Motor Carrier Act of 1935 and the Transportation Act of 1940 applied like principles to the regulation of common carriers by motor vehicles.*" [Italics supplied.]; (R. 87: 45 Fed. Supp. 933, 937.)

<sup>5</sup> The Commission's report (38 M. C. C. 137, 162-3) states:

"The large size of a motor carrier which would result from a unification alone does not constitute sufficient ground for denial of an application. Application of such a policy would tend to freeze the motor-carrier industry at its present level. Such transportation, compared with rail and water transportation, is still in its infancy, and arbitrary restrictions upon its natural development into larger units solely by reason of comparative size would not be in the public interest. There are many thousands of motor carriers of property subject to our jurisdiction. Many of these are very small, and small motor carriers are necessary and have

that "The legislative history of section 5 indicates a clear Congressional intent to encourage unifications, particularly of railroads." It is submitted that the Commission has here fallen into a complete misconception of the policy expressed by the Congress and a grievous misconstruction of the applicable statutes.

The legislative history of Section 5 of the Interstate Commerce Act shows that it was originally enacted as a restraint upon combinations of carriers, quite similar in purpose and intent to the prohibitions embodied in the antitrust laws; that because of the financial plight of the railroads following the first World War, the Transportation Act of 1920 modified Section 5 with a view to encouraging mergers of rail carriers (and only

a definite place in the industry. On the other hand, it would seem that larger motor-carrier systems, comparable in size and strength with units of competing forms of transportation, should also have their place in the industry. *The legislative history of section 5 indicates a clear Congressional intent to encourage unifications, particularly of railroads.* In view of the national transportation policy, as declared in the act, it cannot be supposed that Congress intended that the motor-carrier industry, a coordinate and competing form of transportation, should not also be permitted to grow through consolidations, or that the mere size of the consolidated company should, of itself, be sufficient to warrant denial. Considering the much greater number of motor carriers of property and their size as compared with railroads generally, *the need for unification in the trucking field is at least as great as in the case of railroads, which have had many years of development and now comprise comparatively few systems.*" [Italics supplied.]

rail carriers were involved, motor carriers not then being subject to federal regulation); that the congressional policy with respect to motor-carrier mergers, as embodied in Section 213 of the Motor Carrier Act of 1935, contained no provisions similar to the modifications adopted with respect to rail mergers by the Transportation Act of 1920, but on the contrary sought to give effect to the policies of the antitrust laws and to prevent the domination of the motor-carrier industry by influences connected with the railroads; and that the Transportation Act of 1940, in combining into a single section the merger provisions applicable to rail, motor, and water carriers, did not alter or modify the policies theretofore in force with respect to mergers of motor carriers.

A brief review of the legislative history of Section 5 of the Interstate Commerce Act, as amended, will demonstrate the soundness of the foregoing propositions. Section 5 of the original Interstate Commerce Act of 1887 was an absolute prohibition against the pooling of traffic of different and competing railroads, or any division of their earnings.\* The spirit and purpose of this prohibition is substantially identical with that which led to the passage, three years later, of the

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\* 24 Stat. 380. The Panama Canal Act of August 24, 1912, 37 Stat. 566, added a new paragraph making it unlawful for a railroad to have any interest in a water carrier operated through the Panama Canal or elsewhere with which it does, or may, compete.

Sherman Act.<sup>7</sup> Indeed, these antipooling provisions may be regarded as the beginning of federal antitrust legislation.

No relaxation of these restraints was authorized by the Congress until the Transportation Act of 1920, whereby Section 5 of the Interstate Commerce Act was extensively amended.<sup>8</sup>

Paragraph (1), as amended, provided that the pooling of traffic or earnings should remain unlawful "except upon specific approval by order of the Commission as in this section provided." A proviso to this paragraph declared that "whenever the Commission is of opinion \* \* \* that the division of their traffic or earnings, to the extent indicated by the Commission, will be in the interest of better service to the public, or economy in operation, and will not unduly restrain competition, the Commission shall have authority by order to approve and authorize" such division of traffic or earnings under just and reasonable rules and regulations.<sup>9</sup>

<sup>7</sup> Sherman Act of July 2, 1890, 26 Stat. 209.

<sup>8</sup> 41 Stat. 456, 480-2. Section 5, as amended in 1920, is reproduced in the Appendix hereto.

<sup>9</sup> Regarding this amendment, Senator Cummins, sponsor in the Senate of the 1920 Act, said:

"It is apparent, Mr. President, that this provision is not only an important one but is a radical departure from the policy which we have heretofore pursued. \* \* \* I have thought it my duty to refer to it, because it is, as I have indicated, a substantial departure from the policies we have so long pursued." [Congressional Record, Vol. 59 (66th Cong. 2nd Sess.), p. 141].

The above and other provisions of the Transportation Act of 1920 marked a new departure in railroad regulation, as many decisions of this Court have made clear.<sup>10</sup> Among such provisions were those designed to encourage consolidations of railroads. Senator Cummins, co-author of the 1920 Act, was convinced that no remedy but consolidation would relieve the plight of the railroads.<sup>11</sup> The bill which passed the Senate called for compulsory consolidation, but the conferees re-

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<sup>10</sup> In *Wisconsin Railroad Commission v. C., B. & Q. R. R. Co.*, 257 U. S. 563, 585 (1922), this Court said:

"It is manifest from this very condensed recital that the act made a new departure. Theretofore the control which Congress through the Interstate Commerce Commission exercised was primarily for the purpose of preventing injustice by unreasonable or discriminatory rates against persons and localities, and the only provisions of the law that inured to the benefit of the carriers were the requirement that the rates should be reasonable in the sense of furnishing an adequate compensation for the particular service rendered and the abolition of rebates. The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. This is expressly declared in § 15a to be one of the purposes of the bill."

Other decisions of this Court demonstrate wherein the Transportation Act of 1920 effected a new departure with respect to rail carriers: *New England Divisions Case*, 261 U. S. 184, 189 (1923); *Dayton-Goose Creek Ry. Co. v. United States*, 263 U. S. 456, 478 (1924); *Texas & Pacific Ry. Co. v. Gulf, etc., Ry. Co.*, 270 U. S. 266, 277 (1926); *New York Central Securities Corp. v. United States*, 287 U. S. 12, 24-25 (1932); *Texas v. United States*, 292 U. S. 522, 530 (1934).

<sup>11</sup> Congressional Record, Vol. 59 (66th Cong., 2nd Sess.), pp. 131-135.

jected so extreme a step and adopted the language which appears in the statute as enacted.<sup>12</sup> It is plain, however, that the act as passed was intended to encourage railroad consolidations rather than to restrain them.

Paragraph (2) empowered the Commission to approve and authorize the acquisition by one rail carrier "of the control of any other such carrier or carriers either under a lease or by the purchase of stock or in any other manner not involving the consolidation of such carriers into a single system for ownership and operation" whenever the Commission is of opinion that such acquisition "will be in the public interest."<sup>13</sup>

<sup>12</sup> Congressional Record, Vol. 59 (66th Cong., 2nd Sess.), p. 3327 (statement by Senator Cummins). See also p. 3264 (statement by House managers); pp. 3052-3 (text of amended Section 5 in conference report); p. 3316 (conference report agreed to by House); p. 3350 (agreed to by Senate).

<sup>13</sup> It was apparent that under the 1920 Act acquisitions would be merely a temporary expedient to forestall a railroad collapse because of the inability of the Commission to approve any consolidation until it had drawn up a plan for the consolidation of the roads of the country into several systems. *Snyder v. New York C. & St. L. R. Co.*, 118 Ohio St. 72 (1928); *aff'd*, 278 U. S. 578. This plan was not formulated until December 1929 (159 I. C. C. 522; 185 I. C. C. 403). Thereafter Congress, in the Emergency Railroad Act of 1933, consolidated the acquisition and consolidation paragraphs of old section 5 into one paragraph, and provided that the Commission could approve an acquisition or a consolidation only if it would "promote the public interest" and was in accordance with its plan for the consolidation of the railroads of the country into several large systems.

Paragraph (4) required the Commission to prepare and adopt as soon as practicable "a plan for the consolidation of the railway properties of the continental United States into a limited number of systems," and added that "competition shall be preserved as fully as possible and wherever practicable the existing routes and channels of trade and commerce shall be maintained."<sup>14</sup>

Paragraph (6) provided that: "It shall be lawful for two or more carriers by railroad \* \* \* to consolidate their properties or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership, management, and operation" provided certain specified conditions were met: (a) the proposed consolidation must be in harmony with the Commission's plan of consolidation, and must be approved by the Commission; (b) the bonds and stock of the consolidated corporation must not exceed the value of the consolidated properties; (c) an application for a proposed consolidation must be presented to the Commission, and if after hearing "the Commission finds that the public interest will be promoted by the consolidation and that the conditions of this section have been or will be fulfilled, it may enter an order approving and authorizing such consoli-

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<sup>14</sup> The Transportation Act of 1940 repealed the provisions relating to preparation and adoption by the Commission of such a general plan. Congressional Record (76th Cong., 3rd Sess.), Vol. 86, p. 11768.

dation," and thereupon such consolidation may be effected notwithstanding the law of any State or the decision or order of any State authority to the contrary.

Paragraph (8) relieved the "carriers affected by any order made under the foregoing provisions of this section and any corporation organized to effect a consolidation approved and authorized in such order" from "the operation of the 'antitrust laws' \* \* \* and of all other restraints or prohibitions by law, State or Federal insofar as may be necessary to enable them to do anything authorized or required by any order made under and pursuant to the foregoing provisions of this section."

The Transportation Act of 1920 was intended not so much to restrain the railroads for the benefit of the public, which had been the Congressional purpose in previous regulatory enactments, but to benefit the financially distressed carriers by encouraging consolidations into regional systems and prescribing rates which would insure a "fair return" to the carriers as a whole. In this latter connection, "recapture" provisions were included, which were intended to require the strong railroads to pay one-half of their earnings in excess of a "fair return" into a fund for the benefit of the weaker roads.<sup>15</sup>

<sup>15</sup> The "recapture" provisions were repealed retroactively by the Emergency Railroad Transportation Act of 1933, 48 Stat. 220.

The Emergency Transportation Act of 1933<sup>16</sup> confirmed and carried forward the new railroad policy introduced in 1920 Act. This Court held, in *Texas v. United States, supra*, that one of the primary aims of that policy is the avoidance of "waste," that is, the elimination of duplicate facilities, to achieve which Congress prescribed standards to guide the Commission in the exercise of its authority over acquisitions and consolidations of rail carriers under the Act. The Court said:

The authority given to the Commission to authorize consolidations, purchases, leases, operating contracts, and acquisition of control, was given *in aid of that policy*. *New York Central Securities Corp. v. United States*, 287 U. S. 12, 24, 25. [Italics supplied.]<sup>17</sup>

And it is that policy and those standards which the Commission specifically applied to the merger of motor carriers in the instant case by express reference to the above decision (R. 18).<sup>18</sup> Therein lies the basic error of law in the Commission's report and order.

<sup>16</sup> 48 Stat. 211.

<sup>17</sup> 292 U. S. 522, 530-1. This policy, which led to the elimination of competition between railroads in services and facilities, was implemented by the provision for a Federal coordinator and regional committees of carrier representatives, which functioned until June 15, 1936. 48 Stat. 211-213. No such machinery was ever established for motor carriers.

<sup>18</sup> The Court below likewise relied upon the *New York Central Securities* and the *Texas* cases (R. 87).

The 1933 Act again amended Section 5 of the Interstate Commerce Act.<sup>19</sup> The distinction between "acquisition of control" and "consolidation into a single system" was eliminated. Paragraph (4) of Section 5 provided a single procedure for dealing with the several methods of merger, and declared that such unification "shall be lawful" if effected "with the approval and authorization of the Commission, as provided in subdivision (b)." Subdivision (b) of that paragraph provided that if the Commission finds that "the proposed consolidation, merger, purchase, lease, operating contract, or acquisition of control will be in harmony with and in furtherance of the plan for the consolidation of railway properties established pursuant to paragraph (3), and will promote the public interest, it may enter an order approving and authorizing such consolidation. \* \* \*" Paragraph (6) prohibited "control or management in a common interest," in whatever manner effected, except as provided in paragraph (4).<sup>20</sup> Paragraph (15) reenacted with only verbal changes the provisions relieving the carriers from the operation of the antitrust laws and other restraints

<sup>19</sup> 48 Stat. 217-220.

<sup>20</sup> In the *Nickel Plate* case, 79 I. C. C. 581, the Commission had held (Commissioner Eastman dissenting) that its approval was not necessary, under Section 5 as amended by the Transportation Act of 1920, for a merger not violative of the antitrust laws, but that the consolidation might be effected under State law. *Snyder v. N. Y. C. & St. L. R. Co.*, 118 Ohio St. 72, 85 (1928); *aff'd*, 278 U. S. 578.

imposed by, or under authority of, state or federal law.

From the foregoing it is clear that the policy and criteria applied by the Commission would have been appropriate in a merger of rail carriers, in view of the expressed intent and purpose of Congress to encourage consolidations of such carriers, but the Commission and the court below erred in holding that the same policy and criteria were applicable to mergers of motor carriers.

**B. THE STANDARDS AND CRITERIA APPLICABLE TO MERGER OF MOTOR CARRIERS INCLUDE THE POLICY AND PROVISIONS OF THE ANTI-TRUST LAWS**

As stated above, the prohibition against pooling of traffic or earnings by rail carriers contained in Section 5 of the original Interstate Commerce Act, enacted in 1887, was in fact the first federal antitrust law. It was supplemented in 1890 by the Sherman Act.<sup>21</sup> Resort to "the

<sup>21</sup> In a textbook by William L. Snyder, *The Interstate Commerce Act and Federal Anti-Trust Laws* (1904), 121-122, the author points out that—

"Notwithstanding the stringent provisions of Section 5, combinations in restraint of trade became so formidable that on July 2, 1890, Congress passed the Sherman Act, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies.' The provisions of the act were made universal in their application to reach the heart of the evil sought to be remedied. It declares that 'every contract' in restraint of trade or commerce is unlawful. It is immaterial, therefore, whether such a contract, if it affects interstate commerce, is made with the carrier, shipper, manufacturer, or producer. The contract, if it restrains trade and commerce, is unlawful. *The Sherman Act, with reference to*

history of the times when it was passed"<sup>22</sup> shows that public opinion in the United States regarded with the same grave concern the abuses practiced by railroads and those engaged in by other "trusts."<sup>23</sup> By 1920, however, the railroads had become the object of Congressional solicitude because of their weakened financial condition; and a policy was adopted of encouraging their consolidation into a limited number of systems in order to relieve their distress and to enable them to render adequate service to the public.

With respect to motor carriers, however, there has been no occasion for such solicitous and exceptional treatment.<sup>24</sup> Hence, it was not necessary

*the Commerce Act, is practically supplemental legislation. Its effect and operation is to broaden the provisions of Section 5 so as to embrace not only carriers, but manufacturers and producers as well.* [Italics supplied.]

<sup>22</sup> *United States v. Trans-Missouri Freight Association*, 166 U. S. 290, 319 (1897). See also *United States v. Joint Traffic Association*, 171 U. S. 505, 565 (1898); and *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 212 (1940).

<sup>23</sup> Indeed, rebates from railroads constituted one of the means by which the Standard Oil Company attained its "bad eminence." Ida M. Tarbell, *The History of the Standard Oil Company* (1904), II, 67, 77.

<sup>24</sup> Indeed, it was the success which motor carriers enjoyed in competing with the railroads which led to passage of the Motor Carrier Act of 1935. The railroads argued that competing forms of transportation ought not to remain unregulated, and State regulation was impossible under *Buck v. Kykendall*, 267 U. S. 307, 315 (1925). Thus, regulation of motor carriers was not undertaken for the protection of shippers against high rates, but for the protection of rail carriers against low rates resulting from unregulated competition by

for the Congress to relax its original antitrust policy by encouraging consolidations of such carriers. Consequently, so far as the merger of motor carriers is concerned, the Congressional policy condemning restraints of trade and elimination of competition remained in force. It is therefore submitted that the statutory language relating to such mergers should receive an interpretation recognizing the Commission's duty to be guided by, and to give effect to, that policy. The Commission's action with respect to motor carrier mergers under Section 5 should be inspired by the philosophy of competitive enterprise underlying American antitrust legislation, and should be shaped in accordance with the doctrine developed by the courts in dealing with

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motor carriers. James C. Nelson, "The Role of Regulation Reexamined," National Resources Planning Board, Transportation and National Policy (1942): 197, 202-3. At the time, not all members of the Interstate Commerce Commission were sure that regulation of motor-carrier rates and restrictions upon the right to enter the business were necessary or desirable. Commissioner Woodlock said:

"I concur in this report with reservations. Regulation is not in itself a good thing. The less regulation that is necessary, other things being equal, the better for the community. It is necessary in the case of public-service utilities because of their semimonopolistic nature. Transportation in general is not *per se* of such nature; transportation by railroad is. Transportation by motor bus and motor truck does not necessarily depend upon monopolistic or semimonopolistic organization or performance. It is manifest that at the present time these services are much more largely of a competitive than of a monopolistic nature. For that reason the need for

enforcement of those laws.<sup>25</sup>

It is plain that the true function of the Commission in supervising mergers of motor carriers is not to encourage such consolidations, but to exercise a restraining influence upon the plans of "economic empire-builders" in the motor-transportation field. The Commission's scrutiny of a proposed merger should be as vigilant and painstaking, and should proceed upon the basis of the same economic postulates and presumptions, as an investigation into the same matter by the Anti-trust Division of the Department of Justice to determine whether there is any evidence of illegal combination.

Indeed, the provisions of Section 5, insofar as motor-carrier mergers are concerned, should be

regulation, except insofar as concerns the public safety, is not wholly clear. \* \* \* [*Motor Bus and Truck Operation*, 140 I. C. C. 685, 750.]

During debates on the bill, assurance was given by its sponsor, Senator Wheeler, that the new legislation would not be used for the purpose of increasing truck rates to the rail level. *Congressional Record* (74th Cong., 1st Sess.), Vol. 79, pp. 5650, 5735. As a matter of fact, however, there is considerable evidence to the effect that through concerted action by rail and motor-carrier rate bureaus, a program to increase motor rates up to the rail level has been pursued. Hearings before the Committee on Interstate Commerce, United States Senate (78th Cong., 1st Sess.), on S. 942 (1943), Part II, p. 464, *et seq.*

<sup>25</sup> The Commission, like the courts, must accept the determination of Congress that interstate commerce shall be governed by the rule of competitive enterprise, regardless of such conflicting views as may be entertained by economists. *Trenton Pottery Co. v. United States*, 273 U. S. 392, 397 (1927).

regarded as establishing a procedure for enforcing the policies embodied in the antitrust laws more effectively than is possible by means of the remedies available to the Department of Justice.<sup>26</sup> The economic results of criminal and civil litigation are often negligible, and parties willing to risk the burdens of such litigation cannot normally be prevented from consummating their plans for the elimination of competition before the Department of Justice has an opportunity to act. What may well be regarded as a more effective means of ensuring compliance by motor carriers with the requirements of the antitrust laws is provided by Section 5. Prior administrative approval is required before a merger may be effected.<sup>27</sup> Under this procedure, if vigilantly and earnestly administered, it should be possible to thwart monopolistic combinations "in their incipency," rather than merely to dissolve them at a later stage, "with unsatisfactory results so far as the purpose to maintain free competition is

<sup>26</sup> Concurrent civil suits and criminal prosecutions are the only weapons at the disposal of the Department of Justice. *Standard Sanitary Mfg. Co. v. United States*, 226 U. S. 20, 52 (1912).

<sup>27</sup> This is not the case in the enforcement of the antitrust laws by the Department of Justice. See Thurman W. Arnold, *The Bottlenecks of Business* (1940), 144; Milton Katz, *The Consent Decree in Antitrust Administration*, 53 Harv. L. Rev. (1940) 415, 434, 440-2; *Report of the Attorney General of the United States* (1938) 64; *Report of the Attorney General of the United States* (1928), 31; *Report of the Attorney General of the United States* (1927), 25.

concerned.”<sup>28</sup> Since often “it is not possible to resurrect the competitors who have been slain,”<sup>29</sup> the competitive status quo cannot be restored, once competition has been eliminated.

This interpretation of the applicable statutory provisions is strongly supported by their legislative histories. In enacting Section 213 of the Motor Carrier Act of 1935,<sup>30</sup> Congress did not intend to encourage mergers of motor carriers but to subject them to strict government supervision. Senator Wheeler, in charge of the measure in the Senate, said:

At present most truck operations are small enterprises. However, there are many rumors of plans for the merging of existing operations into sizeable systems. In

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<sup>28</sup> *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U. S. 346, 356 (1922).

<sup>29</sup> *Patterson v. United States*, 222 Fed. 599, 625 (C. C. A. 6, 1915).

<sup>30</sup> The substance of Section 213 of the Motor Carrier Act of 1935 was incorporated in Section 5 of the Interstate Commerce Act by the Transportation Act of 1940. This amendment was wholly for convenience, and did not alter the meaning of the provisions relating to motor carriers. It brought together in one section the merger provisions applicable to all types of carriers subject to the Commission's regulatory jurisdiction. *Congressional Record* (76th Cong., 3rd Sess.), vol. 86, pp. 5853-4, 10166-7, 11543, 11546, 11768. The mere fact, however, that the same verbal formula is applicable does not mean that the same substantive standards should be applied by the Commission to all types of merger. *Atlantic Cleaners & Dyers v. United States*, 286 U. S. 427, 433-4, (1932); *United States v. Curtiss-Wright Export Corp.*, 299 U. S. 304, 315 (1936).

view of past experience with railroad and public utility unifications, it is regarded as necessary that the Commission control such developments, where the number of vehicles involved is sufficient to make the matter one of more than local importance.<sup>31</sup>

This language clearly indicates the intention of the framers of the Motor Carrier Act that the Commission should restrain rather than encourage mergers. This is particularly true with respect to mergers involving the acquisition of control of motor carriers by railroad interests. Specific provisions in the law prohibit such control except under the most limited conditions and then only after certain specific findings. Regarding these provisions, Senator Wheeler said:

With this limitation, it will be possible for the Commission to allow acquisitions which will make for coordinated or more economical service and at the same time protect the public against a monopolization of highway carriers by rail, express, or other interests.<sup>32</sup>

Mr. Sadowski, in the House of Representatives, likewise explained the intention of the Committee on Interstate Commerce.

Section 213 provides that the Commission shall control the consolidation, merger, and acquisition of control of motor carriers. I will say in this respect that it is the intent.

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<sup>31</sup> Congressional Record (74th Cong., 1st Sess.), vol. 79, pp. 5654-5.

and it is important to the welfare and progress of the motor-carrier industry, that the acquisition of control of the carriers be regulated by the Commission so that the control does not get into the hands of other competing forms of transportation, who might use the control as a means to strangle, curtail, or hinder the progress of highway transportation for the benefit of the other competing transportation.<sup>32</sup>

From the foregoing statements made by the sponsors of the Act, it is obvious that Congress did not intend to adopt for motor-carrier mergers the same policy of consolidation which conditions had compelled it to adopt for rail carriers. Congress had no intention of encouraging mergers in the motor-carrier field. On the contrary, it perceived the necessity for vigilant scrutiny of such transactions by a public agency, in order that the traditional American policy of competitive enterprise might be preserved throughout the motor-carrier industry and in the relations of that industry with other forms of transportation.

C. SECTION 5 (11) OF THE INTERSTATE COMMERCE ACT, PROPERLY CONSTRUED, DOES NOT RELIEVE THE COMMISSION FROM APPLYING AND GIVING EFFECT TO THE ANTI-TRUST LAWS

The Commission construed Paragraph 11 of Section 5 as placing wholly within its hands, regardless of and unfettered by the provisions and

<sup>32</sup> Congressional Record (74th Cong., 1st Sess.), vol. 79, p. 12206.

policies embodied in the antitrust laws, the power to grant or deny mergers of motor carriers. The Commission's claim to such power is stated, as follows (R. 22):

In our opinion, the Congress intended to place wholly within our judgment the granting or denying of authority for these transactions under Section 5.

It is submitted that this is an erroneous interpretation of the pertinent statutory provision. The Congress did not intend to delegate to the Commission a naked power to act as it saw fit, or to deprive the antitrust laws of applicability except at the whim or caprice of the Commission; on the contrary, Congress conferred upon the Commission a jurisdiction to be exercised in accordance with the declared policy of Congress and the prescribed statutory standards and criteria.

This distinction between *power to decide* and *rule of decision* may be illustrated by two analogies. The first is taken from international law. The difference is similar to that between a tribunal which is entrusted with jurisdiction to settle an international controversy in accordance with applicable rules of law, and one whose function is simply to render a binding decision which will terminate the dispute, regardless of legal rules.<sup>33</sup>

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<sup>33</sup> As to types of international arbitration and judicial settlement, see Elihu Root, *Addresses on International Subjects* (1916), 148; James Brown Scott, *Sovereign States and Suits* (1925), 242-5.

Another illustration of the distinction between power to decide and rule of decision is shown by the statutory requirement that "The laws of the several States \* \* \* shall be regarded as *rules of decision* in trials at common law, in the courts of the United States." [Italics supplied.]<sup>34</sup>

The *power to decide* possessed by such courts, however, is conferred by an entirely distinct section of the Judicial Code.<sup>35</sup>

The Court will note that Section 5 (11) does not relieve the Commission from applying and giving effect to the antitrust laws; it is operative only upon the *carriers* and not upon the *Commission*. The provision merely relieves the carriers from the operation of the antitrust laws (and of all other restraints, limitations and prohibitions of Federal, State, or municipal law) insofar as may be necessary to enable them to carry into effect the transactions approved by the Commission. The provision is not addressed to the Commission, and does not contain any directions to that body with respect to the standards and criteria to be applied when passing upon a proposed transaction. The provision deals with the *effect* of the Commission's order, rather than with the *rules of decision* by which the Commission is to

<sup>34</sup> 28 U. S. C. 725.

<sup>35</sup> 28 U. S. C. 41. The jurisdiction, organization, and functioning of United States courts are not affected by State law. *Yick Wo v. Hopkins*, 118 U. S. 356, 365-6 (1886); *Herron v. So. Pacific Co.*, 283 U. S. 91, 94 (1931).

be governed in making such order. It is similar to a provision which exempts from punishment a soldier acting in accordance with the orders of his superior officer, but does not constitute a directive for the guidance of such officer in issuing orders.<sup>36</sup>

It follows that, so far as the statutory standards and criteria to be followed by the Commission in reaching its decision are concerned, Paragraph 11 of Section 5 may be completely disregarded. The rules of decision to be applied by the Commission must be found elsewhere. The long-established policy embodied in the antitrust laws constitutes one of the sources from which the Commission is to derive such rules.

**D. THE STATUTORY STANDARDS AND CRITERIA TO BE APPLIED BY THE COMMISSION, UNDER THE TRANSPORTATION ACT OF 1940 TO MERGERS OF MOTOR CARRIERS, INCLUDE MORE THAN MERE "TRANSPORTATION CRITERIA"**

In addition to the antitrust laws, the Commission must take into account such other standards and criteria as are included within the general statutory concept of "public interest." These standards and criteria are not limited to mere "transportation criteria," as the Commission asserts,<sup>37</sup> but relate also to the broader aspects of public interest, which transcend routine consid-

<sup>36</sup> See *Restatement of the Law of Torts* (1934), I, § 146, p. 343: "A soldier may be privileged to obey an order which the superior who gives it should recognize as being clearly beyond his discretion to give."

<sup>37</sup> Brief of Interstate Commerce Commission in the court below, pp. 26, 36.

erations of carrier interest. The Commission disregarded these broader considerations, as did the court below, and limited itself to a consideration of certain transportation criteria<sup>38</sup> relating to "the attainment of the ends Congress sought to accomplish under the Interstate Commerce Act administered by the Commission" (R. 87). In so narrowing its vision, the Commission disregarded the principle which was enunciated by this Court in *Southern Steamship Co. v. National Labor Relations Board*, 316 U. S. 31, 47 (1942), as follows:

It is sufficient for this case to observe that the Board has not been commissioned to effectuate the policies of the Labor Relations Act so single-mindedly that it may wholly ignore other and equally important Congressional objectives. Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative body that it undertake this accommodation without excessive emphasis upon its immediate task.

A similar holding that an administrative body charged with determination of questions as to public interest, convenience, and necessity, should take account of the antitrust laws is found in this Court's decision in *National Broadcasting Co.*

<sup>38</sup> The "transportation criteria" utilized by the Commission related to such matters as anticipated economies, anticipated improvements in the use of equipment, and simplification of corporate dealings with regulatory agencies (R. 18).

v. *United States*, 319 U. S. 190, 215, 223 (1943).

The Interstate Commerce Act itself enumerates certain standards to be applied by the Commission. That Act makes it the duty of the Commission to insure adequate transportation service. This is evident from a reading of the declaration of the National Transportation Policy in the Act.<sup>39</sup> Congress again emphasizes this objective in Section 5 (2) (c), wherein it specifically directs the Commission to give weight to certain considerations, one of which is "The effect of the proposed transaction upon adequate transportation service to the public."

It is clear that the statute is framed on the assumption that this criterion calls for denials as well as approvals of applications to merge carriers for hire. The Act does not permit the merger of strongly competing motor carriers into a vast system if adequate transportation can be maintained or achieved without such merger. Nor does it permit mergers which involve attempts to monopolize transportation services.

On the other hand, if present transportation service is clearly inadequate, it becomes the duty of the Commission to approve such proposed mergers as will remedy the evil. Such judgments are safeguarded in that the Commission is dealing with present existing facts which can be examined. Evidence can be taken as to who is suffering

<sup>39</sup> 54 Stat. 899.

from lack of adequate service and why. Economies in operation may be approved, but not at a price which involves undue restraint of competition. Remedies which involve some restraint of competition can be limited to curing the specific evils found. In short, public policy looks to private initiative in a competitive system to bring about future betterments of service. The Commission's concern and duty is to insure that the public does not suffer from lack of adequate service while the competitive race is going on. This is the spirit and principle of the Interstate Commerce Act.

Furthermore, the Commission is directed by the National Transportation Policy to preserve the inherent advantages of each type of transportation. These inherent advantages in motor-carrier transportation, which will be considered hereinafter, are to be achieved through competition and not regulated monopoly.

E. THE COMMISSION MAY NOT PROPERLY APPROVE A MERGER WHICH WOULD VIOLATE THE ANTITRUST LAWS UNLESS NECESSARY IN ORDER TO PROVIDE ADEQUATE TRANSPORTATION SERVICE

A proper interpretation of Section 5 requires consideration of all applicable provisions of law from which the foregoing rules of decision are derived. Such an interpretation impels the conclusion that the Commission should not approve a merger of motor carriers which would otherwise violate the antitrust laws unless such action

is necessary to provide adequate transportation service for the public. Circumstances are conceivable in which, due to physical conditions or the absence of sufficient traffic to support more than one carrier, the Commission might possibly find that a monopolistic situation violating the antitrust laws was none the less necessary in order to provide adequate transportation service for the public.

But it is submitted that a merger otherwise illegal under the antitrust laws should not be authorized unless it is necessary to provide adequate service for the public. Lesser matters of mere convenience (such as improved equipment or increased economy in operation) are not sufficient to warrant departure from the settled policies of the law.<sup>40</sup>

It follows that the correct interpretation of Section 5 is that, before it may authorize a merger violative of the antitrust laws, the Commission must determine that existing motor carrier service is inadequate and that the proposed merger is nec-

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<sup>40</sup> The distinction here urged resembles that often applied in determining whether the required *quantum* of proof of "public convenience and necessity" has been offered in behalf of a new service when there is already in the field an adequate existing service. It is ordinarily held, in such cases, that more must be proved than that some improvement in service will result, or that the new service will be slightly superior in some respects, or more convenient than the existing service. *Lake, Competition in the Public Utility Fields*, 10 *Mississippi L. J.* (1938) 197, 215-6, 219, and decisions therein cited.

essary in order to provide adequate transportation service for the public.

The above sets forth the important statutory standards and criteria which are applicable to mergers of motor carriers under the Transportation Act of 1940<sup>11</sup> and which, as has been shown, are different from those prescribed (for railroad mergers) in prior transportation acts. Summarized, the criteria applicable in this case are:

1. The proposed merger must be "consistent with the public interest" in the broad sense hereinabove outlined, which includes not merely the technical "transportation criteria" which the Commission applied but also other applicable rules of decision, including the antitrust laws;

2. Adequate transportation service must be maintained, and the Commission must consider the effect of the proposed merger upon adequate transportation service to the public;

3. Hence, substantial competition must not be eliminated unless necessary to maintain or achieve adequate transportation service;

4. Likewise, mergers of motor carriers which involve attempts to monopolize motor-carrier service over the public highways must not be approved;

5. The inherent advantages of motor-carrier transportation must be preserved; and,

<sup>11</sup> 54 Stat. 899.

6. Hence, the Commission may not authorize mergers through which railroad interests obtain domination or control of motor-carrier transportation.

## II

### THE COMMISSION FAILED TO MAKE NECESSARY FINDINGS

Under established principles of judicial review, an order of the Commission may be set aside for failure to make necessary findings. *Florida v. United States*, 282 U. S. 194, 215 (1931); *United States v. C., M., St. P. & P. R. Co.*, 294 U. S. 499, 504-5 (1935).

It is submitted that in the case at bar the Commission failed to make necessary findings.

#### A. THE COMMISSION MADE NO FINDING THAT EXISTING MOTOR-CARRIER SERVICES WERE INADEQUATE

As demonstrated above, the proper construction of Section 5 of the Interstate Commerce Act requires the Commission to refrain from approving a merger of motor carriers, otherwise violative of the antitrust laws, unless such merger is necessary to insure adequate transportation service to the public. Accordingly, an essential finding which the Commission must make is that existing motor-carrier service is inadequate. No such finding was made by the Commission in the present case. The Commission merely found that certain improvements in service would result from the

merger through interchange of equipment;<sup>42</sup> that simplified relations with shippers and regulatory bodies would result, and that certain economies would be effected through greater purchasing power and by savings in general and administrative expenses (R. 15-18).<sup>43</sup> Manifestly a finding

<sup>42</sup> Although the Commission admitted that theoretically this advantage could be obtained without consolidation (R. 16).

<sup>43</sup> Commissioner Splawn regarded the alleged prospects for economies as vague and speculative (R. 48). His judgment was vindicated by subsequent events as shown by the Commission's report in *Increased Common Carrier Truck Rates in the East*, 42 M. C. C. 633, 646. The Commission there said:

"The operating rights and properties of seven motor common carriers were consolidated in Associated pursuant to the authority granted in *Associated Transport, Inc.—Control and Consolidation*, 38 M. C. C. 137. The consolidation was not completed until January 1, 1943. The data for the first quarter of 1943 in the foregoing table represent the results of the first 3 months of combined operation. *In seeking approval of the consolidation, the proponents contended that numerous economies would result and the combined operation would be more efficient than the separate operations of the individual companies. The predicted economies apparently were not realized in the first quarter of 1943, and the increase in operating expenses over those of Associated's predecessors cannot be explained solely by increased labor costs or other increased costs of record. We are not unmindful that, in such a large merger of motor carriers, economies and increased efficiency of combined operation cannot be put into effect immediately. It is apparent from an examination of the foregoing table that the operations of Associated during the first quarter of 1943 are not typical of those of the other respondents, and, therefore, we cannot accord great weight to the deficit incurred by Associated during the first 3 months of combined operation in determining the issues in this proceeding.*" [Italics supplied.]

that "the consolidation would result in improved transportation service" (R. 18) is not the equivalent of a finding that existing transportation service is inadequate.

B. THE COMMISSION MADE NO FINDING AS TO THE EFFECT OF THE MERGER UPON ADEQUATE TRANSPORTATION SERVICE TO THE PUBLIC, AS REQUIRED BY SECTION 5 (2) (C) (1) OF THE ACT

Section 5 (2) (c) (1) requires that in passing upon any proposed merger, the Commission shall give weight to "The effect of the proposed transaction upon adequate transportation service to the public." Except for the findings referred to above with respect to improvement of service, the Commission made no findings as to the service that would be available to the public following the consummation of the merger.

The Commission's decision deals at length with motor-truck operations in the territory of the individual carriers participating in the merger *as related to the existing operations of such individual carriers*, but it makes no finding of motor-carrier competition to those lines *merged into one gigantic carrier*. The record shows that there would exist no motor carrier competitive with the carrier which would be created as a result of the merger. Whether or not competition exists is a factual matter to be proved in a given case. It is not a matter of general impression, as to which a finding can be made on the basis of certain statistical figures relied on by the Commission.

Facts conceivably known to the Commission but not put in evidence will not support an order. *Interstate Commerce Commission v. Louisville and Nashville Railroad Company*, 227 U. S. 88, 93 (1913); *The Chicago Junction Case*, 264 U. S. 258, 265 (1924). Clearly the burden is on the applicant to show the existence and nature of the motor-carrier competition which is alleged to exist. This would require evidence as to the routes, the operating rights, the route miles, the volume of business, and number of vehicles operated by the carriers claimed to be competitive. Likewise, the comparative cost to the shipping public, the comparative service in point of time of delivery, the methods of handling, and the existing minimum load requirements of the carriers claimed to be competitive should be put in evidence. Without these and other relevant facts no intelligent opinion, and certainly no finding, can be made with respect to whether or not these carriers are in fact competitive or with respect to the effect of the merger upon adequate transportation service to the public:

The independent motor carriers who intervened in the proceeding before the Commission sought to voice their concern over the adverse effect of the merger on their business, particularly with regard to interchange traffic. Their testimony graphically demonstrated that full and complete information on such traffic at the principal points

of interchange, showing volume and carriers involved, is essential to a determination of the effect of the merger on the ability of such independent carriers to continue to serve the public. The Antitrust Division sought the cooperation of the Commission in obtaining this vital information. While recognizing that the applicant, Associated Transports, Inc., would have power to control interchange traffic, the Commission denied the Division's motion to produce vital information thereon. That it is within the Commission's power to require such information cannot be doubted.

The facts developed by such an inquiry would, together with the evidence in this record, conclusively establish that the proposed merger will result in the diversion to Associated Transport of a large part of the interchange traffic which now moves from carriers concerned in the merger to motor carriers outside the merger, since the merged lines will, whenever possible, carry the traffic all the way to destination. Such diversion will adversely affect the independent lines. On the other hand, there cannot be a corresponding reduction in interchange traffic delivered to the merger since through its extensive route coverage the new company will in many areas furnish the only service available. This evidence is essential to a determination and finding by the Commission under the criterion set forth in Sec-

tion 5 (2) (c) of the Interstate Commerce Act, for the guidance of the Commission, which relates to "the effect of the proposed transaction upon adequate transportation service to the public."

C. THE COMMISSION MADE NO FINDING THAT THE EFFECT OF THE MERGER WOULD BE CONSISTENT WITH THE NATIONAL TRANSPORTATION POLICY TO PRESERVE THE INHERENT ADVANTAGES OF MOTOR TRANSPORTATION

The National Transportation Policy declared by the Congress when the Transportation Act of 1940 was passed provided that all of the provisions of the act should be administered and enforced with a view to carrying out the policy so declared, which included a requirement that regulation of all modes of transportation subject to provisions of the act be "so administered as to recognize and preserve the inherent advantages of each." The legislative history of the act shows that opponents of the legislation feared that motor and water transportation might suffer from the Commission's tendency to be "railroad-minded." Proponents of the legislation insisted that such a contingency was not to be anticipated, in view of the specific provision requiring the Commission to regulate each mode of transportation in such manner as to preserve its inherent advantages.<sup>44</sup> The importance of the declaration

<sup>44</sup> Congressional Record, vol. 84, pp. 5879-83. See also *Interstate Commerce Commission v. Inland Waterways Corp.*, 63 S. Ct. 1296, 1310-11 (June 14, 1943).

of the National Transportation Policy cannot be denied. It is an integral part of the statute administered by the Commission. Nevertheless, the Commission has made no finding that the proposed merger would be consistent with the national policy so declared in the Act.

### III

#### FINDINGS MADE BY THE COMMISSION LACK SUPPORT IN THE EVIDENCE

Under well-settled principles of judicial review, an order of the Commission may be set aside if not supported by substantial evidence. *The Chicago Junction Case*, 264 U. S. 258, 263 (1924); *I. C. C. v. L. & N. R. Co.*, 227 U. S. 88, 91-2 (1913).

#### A. THE COMMISSION'S FINDING THAT THE PROPOSED UNIFICATION IS PREDOMINANTLY AN END-TO-END CONSOLIDATION OF COMPLEMENTARY OPERATIONS IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

The Commission found that the proposed merger is predominantly an end-to-end consolidation of complementary operations (R. 44). As Commissioner Splawn observed in his dissenting opinion, this finding "is not supported by any facts showing the actual operations of the particular companies and seems contrary to the finding of duplication of mileage to the extent of 13,546 miles. One of the companies conducts a special contract-carrier service with armored vehicles. It could hardly be contended that such

a service is complementary to the services rendered by the other parties to the consolidation" (R. 48).

The record shows that what is here involved is not an end-to-end unification of complementary operations, but the component parts of two competing motor-carrier systems, insofar as the major portion of the territory is concerned. The merger will unite these competing carriers into one huge carrier which will then be the largest carrier of its kind in the United States. Substantially all of the operations of Consolidated are paralleled by one or more carriers involved in the merger. Seventy-five percent of the operations of Consolidated are in New England territory, and those operations are paralleled 90 percent by those of McCarthy. The other 25 percent of Consolidated's operations are paralleled 100 percent by those of Moran. Consolidated also parallels Horton and Barnwell between New York and Philadelphia.

Horton is in competition with Barnwell between New York and Philadelphia as well as between those points and Baltimore and Washington. Horton's competition with Barnwell extends further into Virginia, the Carolinas and Georgia, paralleling Barnwell's operations 95 percent. The record shows that the two largest carriers between New York and the South, Horton and Barnwell, form the backbone of the merger. If either of

these two competitors had been left out of the merger, as well as either Consolidated or McCarthy in the North, there would have been a nucleus about which to form a strong competing carrier operating from Boston to the South. To insure that no such competitor could be formed, it was agreed by the promoters that the consummation of the merger be conditioned upon the inclusion therein of Barnwell, Consolidated, Horton, McCarthy and Moran (R. 36).

In the light of these facts it is clear that the Commission's finding that the proposed transaction is predominantly an end-to-end consolidation is not supported by substantial evidence.

**B. THE COMMISSION'S FINDING THAT THE APPLICANT IS NOT AND WOULD NOT BE AFFILIATED WITH ANY RAILROAD IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE**

In furtherance of its policy of competition in the transportation field, Congress has prohibited the control of one form of transportation by another except under the most limited of conditions. This is clearly shown in the history of the Motor Carrier Act of 1935 and the acts regulating other forms of surface transportation and air transportation. As early as 1912, Congress announced its policy of preserving the independence of water carriers by including in the Panama Canal Act<sup>45</sup> a provision which prohibited any common carrier subject to the Interstate Commerce Act from hav-

<sup>45</sup> 37 Stat. 560, 566.

ing any interest whatever in a water carrier or vessel operating through the Panama Canal or elsewhere with which such common carrier was in actual or potential competition.<sup>46</sup> The proper function of a railroad corporation," the House Committee in charge of that Act declared, "is to operate trains on its track, not to occupy the waters with ships in mock competition with itself, which in reality operate to the extinction of all genuine competition."<sup>47</sup>

Congress wrote into the Motor Carrier Act of 1935 a proviso to Section 213 (a) (1) of that Act, which was designed to preserve the motor-carrier

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<sup>46</sup> In *Lake Line Applications under Panama Canal Act*, 33 I. C. C. 700, at page 716, the Commission found:

"These boat lines under the control of the petitioning railroads have been first a sword and then a shield. When these roads succeeded in gaining control of the boat lines which had been in competition with paralleling rails in which they were interested, and later effected their combination through the Lake Line Association, by which they were able to and did drive all independent boats from the through lake-and-rail transportation, they thereby destroyed the possibility of competition with their railroads other than such competition as they were of a mind to permit. Having disposed of real competition via the lakes, these boats are now held as a shield against possible competition of new independents. Since it appears from the records that the railroads are able to operate their boat lines at a loss where there is now no competition from independent lines, it is manifest that they could and would operate at a further loss in a rate war against independents. The large financial resources of the owning railroads make it impossible for an independent to engage in a rate war with a boat line so financed."

<sup>47</sup> H. Rep. No. 423, 62nd Cong., 2nd Sess., p. 12.

industry from domination or control by other forms of transportation which "might use the control as a means to strangle, curtail, or hinder progress in highway transportation for the benefit of the other competing transportation."<sup>48</sup> In 1938 a similar proviso was inserted in Section 408 (b) of the Civil Aeronautics Act<sup>49</sup> and for a similar purpose.<sup>50</sup> In the Transportation Act of 1940, Congress again affirmed its policy with respect to the independence of competing forms of transportation by reenacting therein the provisions of the Panama Canal Act<sup>51</sup> and of Section 213 of the Motor Carrier Act.<sup>52</sup>

This legislative policy was evolved out of years of experience. Seldom have new forms of transportation been developed by those engaged in operating the older means of transportation. Further, the older transportation agencies have generally resisted the new, and have entered the

<sup>48</sup> 79 Cong. Rec. 5655, 12205-6.

<sup>49</sup> 52 Stat. 973, 1001; 54 Stat. 735; 49 U. S. C. 401, 488.

<sup>50</sup> *Pan American Airways Co. v. Civil Aeronautics Board*, 121 Fed. 2d 810 (C. C. A. 2d).

<sup>51</sup> 49 U. S. C. 5 (14-16) (Supp. 1941).

<sup>52</sup> 49 U. S. C. 5 (2) (Supp. 1941); Section 5 (2) (b), Interstate Commerce Act. Although fear was expressed that the slightly altered language of the two sections represented a relaxation of the traditional policy of Congress (86 Cong. Rec. 10175-76, 10180-88, 11270-74, 11537-47, 11610-22, 11634-39, 11760-66), the conferees in charge of the bill stated that the changes were intended merely to clarify the earlier provisions and to leave the substance unchanged (86 Cong. Rec. 10175, 10188, 11270-74, 11543, 11546), and the conference bill was passed without amendment (86 Cong. Rec. 10194, 11766).

new field only after its commercial possibilities have been demonstrated and the new transportation has come to be regarded as a competitive threat to the old. Then the purpose was generally to suppress. Congress in adopting the restrictive provisions of Section 5 (2) (b) intended that motor carriers should be free to act independently of conflicting interests and feared that in the absence of strict public control, motor carriers might become economic captives of financial interests whose primary concern would be the protection of their investments in other forms of transportation.<sup>53</sup> Therefore, the proviso in the above section of the Act requires a showing not merely that the proposed control or domination is consistent with the public interest, but that it will actively promote the public interest in a particular way, that is, by enabling the acquiring carrier "to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition."<sup>54</sup>

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<sup>53</sup> See *American Export Airlines, Inc., etc.*, Docket No. 319, decided July 30, 1942, 3 C. A. B. 631.

<sup>54</sup> The proviso of section 5 (2) (b) reads as follows:

*"Provided, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition."*

It is this proviso of the Act, considered against the above background of its legislative history, that must be applied to the interest of Kuhn, Loeb & Company in this case. The record regarding that interest discloses the following:

First, under the order of March 16, 1942, Kuhn, Loeb & Company, through its wholly owned subsidiary, Transport Company, was authorized to become a substantial minority stockholder of Associated Transport, Inc., owning 6,877 shares, or 18.13 percent, of Associated's preferred stock, and 67,167 shares, or 9.53 percent, of its common stock. The preferred stock has equal voting rights with the common. No single person or corporation owns a majority of the voting stock of Associated Transport, Inc. (R. 36, 41)

Secondly, Kuhn, Loeb & Company had one of its office managers as director of Associated Transport. (R. 11, 750)

Thirdly, Kuhn, Loeb & Company has representatives on the Board of Directors of various railroads throughout the United States. It has for many years been the banker for the Pennsylvania Railroad and Baltimore and Ohio Railroad, both of which serve the territory involved in the proposed merger and, according to the record, are competitive with the motor carriers involved in the merger. (R. 36, 754)

Fourthly, it is denied that any arrangements have been made with Kuhn, Loeb & Company or

with any other banking house to handle the public sale of the securities to be issued. However, it is stated that the securities will not be sold at public sale but pursuant to private arrangement. (p. 39, 751)

The proviso in Section 5 (2) (b) relates not only to the acquisition of motor carriers by a railroad but also by persons or corporations affiliated with a railroad. The term "affiliation" is not left in doubt. It is defined in the statute.<sup>55</sup> Paraphrasing this paragraph, the issue of fact in this case is whether, by reason of the relationship (and the act does not state "stock ownership"; it states "relationship") of Kulm, Loeb & Company to the Pennsylvania Railroad Company and the Baltimore and Ohio Railroad Company, it is reasonable to believe that the affairs of Associated Transport, Inc., will be managed in the interest of those railroads. This would involve among others a consideration whether, if a conflict of interest should arise between these railroads and

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<sup>55</sup> Section 5 (6) of the Interstate Commerce Act reads as follows:

"For the purposes of this section a person shall be held to be affiliated with a carrier if, by reason of the relationship of such person to such carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or any other direct or indirect means), it is reasonable to believe that the affairs of any carrier of which control may be acquired by such person will be managed in the interest of such other carrier."

this motor carrier, Kuhn, Loeb & Company would or could use the weight of its influence against the motor carrier in such manner as to unduly restrain competition.

As the Commission in its report stated that "Protestant's allegation does not specify the particular railroad or railroads with which it is believed applicant would be affiliated as the result of the participation of Kuhn, Loeb & Company," the Antitrust Division included in its Petition for Reopening and Rehearing, which was denied by the Commission, an offer to prove by documentary evidence and by a series of concrete cases drawn from the files of The Pennsylvania Railroad Company, The Baltimore and Ohio Railroad Company, the records of the Interstate Commerce Committee, and the Banking and Currency Committee of the United States Senate, the records of the Interstate Commerce Commission, and from other similar sources, the following facts:

(a) That Kuhn, Loeb & Company have been the principal bankers for the Pennsylvania Railroad System for over a half century and still act in that capacity.

(b) That the major financial transactions between Kuhn, Loeb & Company and the Pennsylvania Railroad-System total in excess of \$1,300,000,000.

(c) That Kuhn, Loeb & Company participated in conferences and planning out of which was organized the Penroad Corporation designed to avoid

the jurisdiction of the Interstate Commerce Commission and the provisions of the Clayton Anti-trust Act; that the entire voting power of the stockholders of that corporation was vested in an officer and two directors of the Pennsylvania Railroad Company; and that the stated purpose of that corporation was "to invest its funds in securities of any corporation or other agency, including those engaged in transportation of any description on land or water or by air, but without power to operate railroads."

(d) That Kuhn, Loeb & Company participated in and negotiated purchases of stock in carriers for the Pennsylvania Railroad System.

(e) That the Pennsylvania Railroad Company through its wholly owned subsidiary, American Contract and Trust Company, owns and operates common carriers of property by motor vehicle and is today the largest railroad owner and operator of such motor truck lines in the Nation.

(f) That the common-carrier motor-truck operations of the Pennsylvania Railroad Company through the American Contract and Trust Company parallel in part those of motor carriers, which are parties to the proposed merger in these proceedings.

(g) That Kuhn, Loeb & Company have been the principal bankers for The Baltimore and Ohio Railroad Company for over a half century.

(h) That Kuhn, Loeb & Company, with Speyer & Co., reorganized The Baltimore and Ohio Rail-

road Company and acted as reorganization managers.

(i) That Kuhn, Loeb & Company has underwritten and sold to the public large amounts of securities for The Baltimore and Ohio Railroad Company and has participated in and negotiated the purchase of stock in carriers for that railroad.

(j) That The Baltimore and Ohio Railroad Company owns a substantial stock interest in a large common carrier of property by motor vehicle which is competitive in part with motor carriers, which are parties to this merger.

(k) That even though Kuhn, Loeb & Company did not have as much as one (1) percent stock interest in The Pennsylvania Railroad Company and The Baltimore and Ohio Railroad Company, they have exercised a powerful influence over those railroads, which has often been a determining factor in their affairs (R. 475).

On the record in this case, and particularly in the light of the offer of proof hereinabove set forth, it is submitted that the substantial financial interest which Kuhn, Loeb & Company would obtain in Associated Transport, Inc., would be contrary to the public interest and the National Transportation Policy,<sup>56</sup> and, further, that the

<sup>56</sup> Commissioner Patterson, in a dissenting opinion, stated: "The main purpose of Arrow inclusion appears to be the opportunity afforded a great banking institution to enter the vast motor-carrier business which serves the nation. I cannot approve indirect participation by Kuhn, Loeb & Com-

instant transaction falls within the proviso of Section 5 (2) (b), in that the circumstances here present are such as to make it reasonable to believe that by reason of the relationship of Kuhn, Loeb & Company to The Pennsylvania Railroad Company and The Baltimore and Ohio Railroad Company, the affairs of Associated Transport, Inc., will be managed in the interest of such railroads. The finding of the Commission that the "applicant is not, and upon consummation of the transactions as proposed would not be, affiliated with any railroad" is, therefore, not supported by substantial evidence.

#### IV

THE COMMISSION'S SUPPLEMENTAL ORDER, VACATING IN PART ITS ORDER OF MARCH 16, 1942, DID NOT RENDER MOOT THE IMPORTANT PUBLIC QUESTIONS ARISING UNDER THE PROVISIO OF SECTION 5 (2) (B)

Protestants opposed the application to the Interstate Commerce Commission for authority to merge the carriers here involved on the specific

pany as part owner of Associated Transport. The influence of such a financial power over the affairs of corporations of which they own a part is far beyond the proportion of stock held. Evils which have attended such participation in railroad transportation are well known. Section 5 of the act was designed largely to avoid recurrence of such evils. The national transportation policy makes it a Commission responsibility to avoid dangers that may injure the transportation system which serves national commerce and defense. I regard part ownership of Associated Transport by Kuhn, Loeb & Company as inimical to public interest and national welfare" (R. 49).

ground, among others, that Arrow Carrier Corporation, one of the parties to the merger, was dominated by Kuhn, Loeb & Company, bankers for the Pennsylvania Railroad Company and The Baltimore and Ohio Railroad Company. The Commission, however, by its order of March 16, 1942, approved the transaction and permitted the inclusion of Arrow Carrier Corporation. Important issues were thereby presented as to the validity of the order of the Commission in view of the terms of the proviso of Section 5 (2) (b).

The court below declined to pass on these issues and disposed of the case as though Arrow had never been a party (R. 85).

Following the institution of suit in the District Court, the sponsors of this merger reduced Kuhn, Loeb & Company's stock participation in Associated Transport, Inc. This they did through a petition to the Commission by Associated Transport, Inc., wherein a supplemental order was sought vacating the order of March 16, 1942, to the extent that it authorized the inclusion of Arrow in the merger. An order granting the petition was entered June 8, 1942. Under the decision of the Commission, no such supplemental order was required for the withdrawal of Arrow. The statement in the Commission's decision thereon is as follows:

In the event that the parties are unable to include Arrow in the consolidation as

herein authorized, the transaction may nevertheless be consummated in other respects pursuant to our order herein *and without necessity for further or modified authority.* [Italics supplied.] (R. 12.)

The courts have consistently held that where questions of public interest are concerned, and where the interpretation of a statute by a commission or similar body under conditions which may be repeated is challenged, the court's jurisdiction continues for the purpose of considering these questions for the guidance of the Commission in the same or similar proceedings.<sup>57</sup>

The Court will note that, under the provisions of Section 5 of the Interstate Commerce Act, Kuhn, Loeb & Company cannot acquire control of more than one motor carrier without Commission approval. If the motor carriers here involved are merged into one company, as proposed, Kuhn, Loeb & Company can proceed, under the Commission's ruling that it is not affiliated with any railroad, to increase its stock holdings in Associated Transport, Inc., to full control without Commission interference.

For the above reasons, it is submitted that the supplemental order of the Commission did not

<sup>57</sup> *Federal Trade Com. v. Goodyear Tire & Rubber Co.*, 304 U. S. 257, 260 (1938); *So. Pac. Terminal Co. v. Int. Comm. Comm.*, 219 U. S. 498; *So. Pac. Co. v. Interstate Comm. Comm.*, 219 U. S. 433; *United States v. Freight Association*, 166 U. S. 290.

render moot the important public questions arising under Section 5 (2) (b) and considered in Section III-B of this Brief.

#### CONCLUSION

Since the Interstate Commerce Commission misconstrued the applicable provisions of law and did not apply the proper statutory standards and criteria, its order should be set aside for mistake of law. The order should be set aside also because the Commission did not make the necessary findings and because findings made by it lack support in the evidence.

Respectfully submitted.

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OCTOBER 1943.

## APPENDIX

SHERMAN ANTITRUST ACT, JULY 2, 1890 (26 STAT.  
209)

SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: \* \* \*

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

NATIONAL TRANSPORTATION POLICY (54 STAT. 899)

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust dis-

criminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

AN ACT TO REGULATE COMMERCE, FEBRUARY 4, 1887  
(24 STAT. 379, 380)

SEC. 5. That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any contract, agreement or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

PANAMA CANAL ACT OF 1912 (37 STAT. 560, 566)

SEC. 11. That section five of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, is hereby amended by adding thereto a new paragraph at the end thereof as follows:

"From and after the first day of July, nineteen hundred and fourteen, it shall be unlawful for any railroad company or other common carrier subject to the Act to regulate commerce to own, lease, operate, control, or have any interest whatsoever (by stock ownership or otherwise, either directly, indirectly, through any holding company, or by stockholders or directors in common, or in any other manner) in any common carrier by water operated through the Panama Canal or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic or any vessel carrying freight or passengers upon said water route or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic; and in case of the violation of this provision each day in which such violation continues shall be deemed a separate offense."

Jurisdiction is hereby conferred on the Interstate Commerce Commission to determine questions of fact as to the competition or possibility of competition, after full hearing, on the application of any railroad company or other carrier. Such application may be filed for the purpose of determining whether any existing service is in violation of this section and pray for an order permitting the continuance of any vessel or vessels already in operation, or for the purpose of asking an order to install new service not in conflict with the provisions of this paragraph. The commission may on its own motion or the application of any shipper institute proceedings to inquire into the operation of any vessel in use by any railroad or other carrier which has not applied to the

commission and had the question of competition or the possibility of competition determined as herein provided. In all such cases the order of said commission shall be final.

If the Interstate Commerce Commission shall be of the opinion that any such existing specified service by water other than through the Panama Canal is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that such extension will neither exclude, prevent, nor reduce competition on the route by water under consideration, the Interstate Commerce Commission may, by order, extend the time during which such service by water may continue to be operated beyond July first, nineteen hundred and fourteen. In every case of such extension the rates, schedules, and practices of such water carrier shall be filed with the Interstate Commerce Commission and shall be subject to the act to regulate commerce and all amendments thereto in the same manner and to the same extent as is the railroad or other common carrier controlling such water carrier or interested in any manner in its operation: *Provided*, Any application for extension under the terms of this provision filed with the Interstate Commerce Commission prior to July first, nineteen hundred and fourteen, but for any reason not heard and disposed of before said date, may be considered and granted thereafter.

No vessel permitted to engage in the coastwise or foreign trade of the United States shall be permitted to enter or pass through said canal if such ship is owned, chartered, operated, or controlled by any person or company which is doing

business in violation of the provisions of the Act of Congress approved July second, eighteen hundred and ninety, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies," or the provisions of sections seventy-three to seventy-seven, both inclusive, of an Act approved August twenty-seventh, eighteen hundred and ninety-four, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," or the provisions of any other Act of Congress amending or supplementing the said Act of July second, eighteen hundred and ninety, commonly known as the Sherman Antitrust Act, and amendments thereto, or said sections of the Act of August twenty-seventh, eighteen hundred and ninety-four. The question of fact may be determined by the judgment of any court of the United States of competent jurisdiction in any cause pending before it to which the owners or operators of such ship are parties. Suit may be brought by any shipper or by the Attorney General of the United States.

TRANSPORTATION ACT OF 1920 (41 STAT. 456, 480)

SEC. 407. The first paragraph of section 5 of the Interstate Commerce Act is hereby amended to read as follows:

"SEC. 5. (1) That, except upon specific approval by order of the Commission as in this section provided, and except as provided in paragraph (16) of section 1 of this Act, it shall be unlawful for any common carrier subject to this Act to enter into any contract agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing

railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid each day of its continuance shall be deemed a separate offense: *Provided*, That whenever the Commission is of opinion, after hearing upon application of any carrier or carriers engaged in the transportation of passengers or property subject to this Act, or upon its own initiative, that the division of their traffic or earnings, to the extent indicated by the Commission, will be in the interest of better service to the public, or economy in operation, and will not unduly restrain competition, the Commission shall have authority by order to approve and authorize, if assented to by all the carriers involved, such division of traffic or earnings, under such rules and regulations, and for such consideration as between such carriers and upon such terms and conditions, as shall be found by the Commission to be just and reasonable in the premises.

“(2) Whenever the Commission is of opinion, after hearing, upon application of any carrier or carriers engaged in the transportation of passengers or property subject to this Act, that the acquisition, to the extent indicated by the Commission, by one of such carriers of the control of any other such carrier or carriers either under a lease or by the purchase of stock or in any other manner not involving the consolidation of such carriers into a single system for ownership and operation, will be in the public interest, the Commission shall have authority by order to approve and authorize such acquisition under such rules

and regulations and for such consideration and on such terms and conditions as shall be found by the Commission to be just and reasonable in the premises.

“(3) The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraph (1) or (2), as it may deem necessary or appropriate.

“(4) The Commission shall as soon as practicable prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems. In the division of such railways into such systems under such plan, competition shall be preserved as fully as possible and wherever practicable the existing routes and channels of trade and commerce shall be maintained. Subject to the foregoing requirements, the several systems shall be so arranged that the cost of transportation as between competitive systems and as related to the values of the properties through which the service is rendered shall be the same, so far as practicable, so that these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties.

“(5) When the Commission has agreed upon a tentative plan, it shall give the same due publicity and upon reasonable notice, including notice to the Governor of each State, shall hear all persons who may file or present objections thereto. The Commission is authorized to prescribe a procedure for such hearings and to fix a time for bringing them to a close. After the hearings

are at an end, the Commission shall adopt a plan for such consolidation and publish the same; but it may at any time thereafter, upon its own motion or upon application, reopen the subject for such changes or modifications as in its judgment will promote the public interest. The consolidations herein provided for shall be in harmony with such plan.

“(6) It shall be lawful for two or more carriers by railroad, subject to this Act, to consolidate their properties or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership, management, and operation, under the following conditions:

“(a) The proposed consolidation must be in harmony with and in furtherance of the complete plan of consolidation mentioned in paragraph (5) and must be approved by the Commission;

“(b) The bonds at par of the corporation which is to become the owner of the consolidated properties, together with the outstanding capital stock at par of such corporation, shall not exceed the value of the consolidated properties as determined by the Commission. The value of the properties sought to be consolidated shall be ascertained by the Commission under section 19a of this Act, and it shall be the duty of the Commission to proceed immediately to the ascertainment of such value for the properties involved in a proposed consolidation upon the filing of the application for such consolidation.

“(c) Whenever two or more carriers propose a consolidation under this section, they shall present their application therefor to the Commission,

and thereupon the Commission shall notify the Governor of each State in which any part of the properties sought to be consolidated is situated and the carriers involved in the proposed consolidation, of the time and place for a public hearing. If after such hearing the Commission finds that the public interest will be promoted by the consolidation and that the conditions of this section have been or will be fulfilled, it may enter an order approving and authorizing such consolidation, with such modifications and upon such terms and conditions as it may prescribe, and thereupon such consolidation may be effected, in accordance with such order, if all the carriers involved assent thereto, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

“(7) The power and authority of the Commission to approve and authorize the consolidation of two or more carriers shall extend and apply to the consolidation of four express companies into the American Railway Express Company, a Delaware corporation, if application for such approval and authority is made to the Commission within thirty days after the passage of this amendatory Act; and pending the decision of the Commission such consolidation shall not be dissolved.

“(8) The carriers affected by any order made under the foregoing provisions of this section and any corporation organized to effect a consolidation approved and authorized in such order shall be, and they are hereby, relieved from the operation of the ‘antitrust laws,’ as designated in section 1 of the Act entitled ‘An Act to supplement exist-

ing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, and of all other restraints or prohibitions by law, State or Federal, insofar as may be necessary to enable them to do anything authorized or required by any order made under and pursuant to the foregoing provisions of this section."

SEC. 408. The paragraph of section 5 of the Interstate Commerce Act, added to such section by section 11 of the Act entitled "An Act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912, is hereby amended by inserting "(9)" at the beginning thereof.

The two paragraphs of section 11 of such Act of August 24, 1912, which followed the paragraph added by such section to section 5 of the Interstate Commerce Act, are hereby made a part of section 5 of the Interstate Commerce Act. The first paragraph so made a part of section 5 of the Interstate Commerce Act is hereby amended by inserting "(10)" at the beginning thereof, and the second such paragraph is hereby amended by inserting "(11)" at the beginning thereof.

AN ACT TO AMEND SECTION 407 OF THE TRANSPORTATION ACT OF 1920, ENACTED JUNE 10, 1921 (42 STAT. 27)

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That Section 407 of the Transportation Act of 1920 be, and it is hereby amended by adding thereto a new paragraph designated as paragraph 9 as follows:*

“(9) Upon the application of one or more telephone companies for authority to consolidate their properties or a part thereof into a single company, or for authority for one or more such companies to acquire the whole or any part of the property of another telephone company or other telephone companies or the control thereof by the purchase of securities or by lease or in any other like manner, when such consolidated company would be subject to this Act, the Commission shall fix a time and place for a public hearing upon such application and shall thereupon give reasonable notice in writing to the Governor of each of the States in which the physical property affected, or any part thereof, is situated, and to the State Public Service Commission or other regulatory body, if any, having jurisdiction over telephone companies, and to such other persons as it may deem advisable. After such public hearing, if the Commission finds that the proposed consolidation, acquisition, or control will be of advantage to the persons to whom service is to be rendered and in the public interest, it shall certify to that effect; and thereupon any act or acts of Congress making the proposed transaction unlawful shall not apply. Nothing in this paragraph contained shall be construed as in any wise limiting or restricting the powers of the several States as now existing to control and regulate telephone companies.”

EMERGENCY RAILROAD TRANSPORTATION ACT OF 1933

(48 STAT. 211, 217)

SECTION 201. Section 5 of the Interstate Commerce Act, as amended (U. S. C., title 49, sec. 5), is amended by striking out paragraphs (2) and

(3) and by renumbering paragraphs (4) and (5) as paragraphs (2) and (3), respectively, and by striking out the last sentence of the paragraph so renumbered as paragraph (3).

SEC. 202. Such section 5 is further amended by striking out paragraphs (6), (7), and (8), and by inserting in lieu thereof the following paragraphs:

“(4) (a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b), for two or more carriers to consolidate or merge their properties, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through purchase of its stock; or for a corporation which is not a carrier to acquire control of two or more carriers through ownership of their stock; or for a corporation which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock.

“(b) Whenever a consolidation, merger, purchase, lease, operating contract, or acquisition of control is proposed under subdivision (a), the carrier or carriers or corporation seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such

carriers and the applicant or applicants, of the time and place for a public hearing. If after such hearing the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed consolidation, merger, purchase, lease, operating contract, or acquisition of control will be in harmony with and in furtherance of the plan for the consolidation of railway properties established pursuant to paragraph (3), and will promote the public interest, it may enter an order approving and authorizing such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon the terms and conditions and with the modifications so found to be just and reasonable.

“(5) Whenever a corporation which is not a carrier is authorized, by an order entered under paragraph (4), to acquire control of any carrier or of two or more carriers, such corporation thereafter shall, to the extent provided by the Commission, for the purposes of paragraphs (1) to (10), inclusive, of section 20 (relating to reports, accounts, and so forth, of carriers), including the penalties applicable in the case of violations of such paragraphs, be considered as a common carrier subject to the provisions of this Act, and for the purposes of paragraphs (2) to (11), inclusive, of section 20a (relating to issues of securities and assumptions of liability of carriers), including the penalties applicable in the case of violations of such paragraphs, be considered as a “carrier” as such term is defined in paragraph (1) of such section, and be treated as such by the Commission in the administration of the para-

graphs specified. In the application of such provisions of section 20a in the case of any such corporation, the Commission shall authorize the issue or assumption applied for only if it finds that such issue or assumption is consistent with the proper performance by each carrier which is under the control of such corporation of its service to the public as a common carrier, will not impair the ability of any such carrier to perform such service, and is otherwise compatible with the public interest.

“(6) It shall be unlawful for any person, except as provided in paragraph (4), to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more carriers, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or management accomplished or effectuated after the enactment of this amendatory paragraph and in violation of its provisions. As used in this paragraph and paragraph (7), the words ‘control or management’ shall be construed to include the power to exercise control or management.

“(7) For the purposes of paragraphs (6) and (11), but not in anywise limiting the application thereof, any transaction shall be deemed to accomplish or effectuate the control or management in a common interest of two carriers—

“(a) If such transaction is by a carrier, and if the effect of such transaction is to place such

carrier and persons affiliated with it, taken together, in control of another carrier.

“(b) If such transaction is by a person affiliated with a carrier, and if the effect of such transaction is to place such carrier and persons affiliated with it, taken together, in control of another carrier.

“(c) If such transaction is by two or more persons acting together, one of whom is a carrier or is affiliated with a carrier, and if the effect of such transaction is to place such persons and carriers and persons affiliated with any one of them and persons affiliated with any such affiliated carrier, taken together, in control of another carrier.

“(8) For the purposes of paragraph (7) a person shall be held to be affiliated with a carrier if, by reason of the relationship of such person to such carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or any other direct or indirect means), it is reasonable to believe that the affairs of any carrier of which control may be acquired by such person will be managed in the interest of such other carrier.

“(9) For the purposes of paragraphs (6), (7), (8), and (11), wherever reference is made to control it is immaterial whether such control is direct or indirect. As used in this paragraph and paragraphs (7), (8), and (11) the term “control” shall be construed to include the power to exercise control.

“(10) The Commission is hereby authorized, upon complaint or upon its own initiative without

complaint, but after notice and hearing, to investigate and determine whether any person is violating the provisions of paragraph (6). If the Commission finds after such investigation that such person is violating the provisions of such paragraph, it shall by order require such person to take such action as may be necessary, in the opinion of the Commission, to prevent continuance of such violation.

“(11) For the proper protection and in furtherance of the plan for the consolidation of railway properties established pursuant to paragraph (3) and the regulation of interstate commerce in accordance therewith, the Commission is hereby authorized, upon complaint or upon its own initiative without complaint, but after notice and hearing, to investigate and determine whether the holding by any person of stock or other share capital of any carrier (unless acquired with the approval of the Commission) has the effect (a) of subjecting such carrier to the control of another carrier or to common control with another carrier, and (b) of preventing or hindering the carrying out of any part of such plan or of impairing the independence, one of another, of the systems provided for in such plan. If the Commission finds after such investigation that such holding has the effects described, it shall by order provide for restricting the exercise of the voting power of such person with respect to such stock or other share capital (by requiring the deposit thereof with a trustee, or by other appropriate means) to the extent necessary to prevent such holding from continuing to have such effects.

“(12) If in the course of any proceeding under this section before the Commission, or of any proceeding before a court in enforcement of an order entered by the Commission under this section, it appears that since the beginning of such proceeding the plan for consolidation has been reopened under paragraph (3) for changes or modifications with respect to the allocation of the properties of any carrier involved in such proceeding, then such proceeding may be suspended.

“(13) The district courts of the United States shall have jurisdiction upon the application of the Commission, alleging a violation of any of the provisions of this section or disobedience of any order issued by the Commission thereunder by any person, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain such person from violation of such provision or to compel obedience to such order.

“(14) The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraph (1), (4), (10), or (11), as it may deem necessary or appropriate.

“(15) The carriers and any corporation affected by any order made under the foregoing provisions of this section shall be, and they are hereby, relieved from the operation of the antitrust laws as designated in section 1 of the Act entitled “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,” approved October 15, 1914, and of all other restraints or prohibitions by or imposed un-

der authority of law, State or Federal, insofar as may be necessary to enable them to do anything authorized or required by such order.

“(16) If any provision of the foregoing paragraphs of this section, or the application thereof to any person or circumstances, is held invalid, the other provisions of such paragraphs, and the application of such provision to any other person or circumstances, shall not be affected thereby.

“(17) As used in paragraphs (4) to (16), inclusive, the term ‘person’ includes an individual, partnership, association, joint-stock company, or corporation, and the term ‘carrier’ means a carrier by railroad subject to this Act.”

SEC. 203. Such section 5 is further amended by renumbering as paragraph (18) the paragraph added by the Act entitled “An Act to amend section 407 of the Transportation Act of 1920,” approved June 10, 1921, and by renumbering the remaining three paragraphs as paragraphs (19), (20), and (21), respectively.

SEC. 204. The provisions of the Interstate Commerce Act, as amended, and of all other applicable Federal statutes, as in force prior to the enactment of this title, shall remain in force, as though this title had not been enacted, with respect to the acquisition by any carrier, prior to the enactment of this title, of the control of any other carrier or carriers.

MOTOR CARRIER ACT OF 1935 (49 STAT. 543, 555)

CONSOLIDATION, MERGER, AND ACQUISITION OF CONTROL

SEC. 213. (a) It shall be lawful, under the conditions specified below, but under no other con-

ditions, for two or more motor carriers which are not also carriers by railroad to consolidate or merge their properties, or any part thereof, into one corporation for the ownership, management, and/or operation of the properties theretofore in separate ownership; or for any such motor carrier or two or more such carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another such carrier; or for any such motor carrier or two or more such carriers jointly, to acquire control of another such carrier through purchase of its stock; or for a person which is not a motor carrier or a carrier by railroad, or express, or water to acquire control of two or more motor carriers through ownership of their stock; or for any such person which has control of one or more motor carriers to acquire control of another such carrier through ownership of its stock; or for a carrier by railroad, express, or water to consolidate, or merge with, or acquire control of, any motor carrier or to purchase, lease, or contract to operate its properties, or any part thereof.

(1) Whenever a consolidation, merger, purchase, lease, operating contract, or acquisition of control is proposed under this section, the carrier or carriers or the person seeking authority therefore shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties or operations of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants, and other parties known to have a substantial interest in the proceed-

ing of the time and place for a public hearing. If after such hearing the Commission finds that the transaction proposed will be consistent with the public interest and that the conditions of this section have been or will be fulfilled, it may enter an order approving and authorizing such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe: *Provided, however,* That if a carrier other than a motor carrier is an applicant, or any person which is controlled by such a carrier other than a motor carrier or affiliated therewith within the meaning of section 5 (8) of part I, the Commission shall not enter such an order unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than a motor carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

(2) Whenever a person which is not a motor carrier is authorized, by an order entered under subparagraph (1) of this section, to acquire control of any such carrier or of two or more such carriers, such person thereafter shall, to the extent provided by the Commission, for the purposes of section 204 (a) (1), and section 220 (a) and (b), relating to accounts, records, and reports, and to the inspection of facilities and records, including the penalties applicable in the case of violations thereof, be subject to the provisions of this part.

(b) (1) It shall be unlawful for any person, except as provided in paragraph (a), to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a com-

mon interest of any two or more motor carriers which are not also carriers by railroad, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or management accomplished or effectuated after the enactment of this part and in violation of this paragraph. As used in this paragraph, the words "control or management" shall be construed to include the power to exercise control or management.

(2) The Commission is hereby authorized, upon complaint or upon its own initiative without complaint, but after notice and hearing, to investigate and determine whether any person is violating the provisions of paragraph (b) (1) of this section. If the Commission finds after such investigation that such person is violating the provisions of such paragraph, it shall by order require such person to take such action consistent with the provisions of this part as may be necessary, in the opinion of the Commission, to prevent further violation of such provisions.

(3) For the purposes of this section, wherever reference is made to control, it is immaterial whether such control is direct or indirect.

(c) The district courts of the United States shall have jurisdiction upon the application of the Commission, alleging a violation of any of the provisions of this section or disobedience of any order issued by the Commission thereunder by any person, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be

necessary to restrain such person from violation of such provision or to compel obedience to such order.

(d) The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraphs (a) or (b), as it may deem necessary or appropriate.

(e) Except where a carrier other than a motor carrier is an applicant or any person which is controlled by such a carrier or carriers by railroad or affiliated therewith within the meaning of section 5 (8) of part I, the provisions of this section requiring authority from the Commission for consolidation, merger, purchase, lease, operating contract, or acquisition of control shall not apply where the total number of motor vehicles involved is not more than twenty.

(f) The carriers and any person affected by any order made under the foregoing provisions of this section shall be, and they are hereby, relieved from the operation of the "antitrust laws," as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and of all other restraints or prohibitions by or imposed under authority of law, State or Federal, insofar as may be necessary to enable them to do anything authorized or required by such order.

TRANSPORTATION ACT OF 1940 (54 STAT. 898, 905)  
POOLING; UNIFICATIONS, MERGERS, AND ACQUISITIONS OF CONTROL

SEC. 7. Section 5 of the Interstate Commerce Act, as amended, is amended to read as follows:

"SEC. 5. (1) Except upon specific approval by order of the Commission as in this section provided, and except as provided in paragraph (16) of section 1 of this part, it shall be unlawful for any common carrier subject to this part, part II, or part III to enter into any contract, agreement, or combination with any other such common carrier or carriers for the pooling or division of traffic, or of service, or of gross or net earnings, or of any portion thereof; and in any case of an unlawful agreement for the pooling or division of traffic, service, or earnings as aforesaid each day of its continuance shall be a separate offense: *Provided*, That whenever the Commission is of opinion, after hearing upon application of any such carrier or carriers or upon its own initiative, that the pooling or division, to the extent indicated by the Commission, of their traffic, service, or gross or net earnings, or of any portion thereof, will be in the interest of better service to the public or of economy in operation, and will not unduly restrain competition, the Commission shall by order approve and authorize, if assented to by all the carriers involved, such pooling or division, under such rules and regulations, and for such consideration as between such carriers and upon such terms and conditions, as shall be found by the Commission to be just and reasonable in the premises: *Provided further*, That any contract, agreement, or combination to which any common carrier by water subject to part III is a party, relating to the pooling or division of traffic, service, or earnings, or any portion thereof, lawfully existing on the date this paragraph as amended

takes effect, if filed with the Commission within six months after such date, shall continue to be lawful except to the extent that the Commission, after hearing upon application or upon its own initiative, may find and by order declare that such contract, agreement, or combination is not in the interest of better service to the public or of economy in operation, or that it will unduly restrain competition.

“(2) (a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof in one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier and terminals incidental thereto.

“(b) Whenever a transaction is proposed under subparagraph (a), the carrier or carriers or

person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in section 205 (e)), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing, and a public hearing shall be held in all cases where carriers by railroad are involved. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

“(c) In passing upon any proposed transaction under the provisions of this paragraph (2), the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

“(d) The Commission shall have authority in the case of a proposed transaction under this paragraph (2) involving a railroad or railroads, as a prerequisite to its approval of the proposed transaction, to require, upon equitable terms, the inclusion of another railroad or other railroads in the territory involved, upon petition by such railroad or railroads requesting such inclusion, and upon a finding that such inclusion is consistent with the public interest.

“(e) No transaction which contemplates a guaranty or assumption of payment of dividends or of fixed charges, shall be approved by the Commission under this paragraph (2) except upon a specific finding by the Commission that such guaranty or assumption is not inconsistent with the public interest. No transaction shall be approved under this paragraph (2) which will result in an increase of total fixed charges, except upon a specific finding by the Commission that such increase would not be contrary to public interest.

“(f) As a condition of its approval, under this paragraph (2), of any transaction involving a car-

rier or carriers by railroad subject to the provision of this part, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this Act, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

“(3) Whenever a person which is not a carrier is authorized, by an order entered under paragraph (2), to acquire control of any carrier or of two or more carriers, such person thereafter shall, to the extent provided by the Commission in such order, be considered as a carrier subject to such of the following provisions as are applicable to any carrier involved in such acquisition of control: Section 20 (1) to (10), inclusive, of this part, sections 204 (a) (1) and (2) and 220 of part II, and section 313 of part III (which relate to reports, accounts, and so forth, of carriers),

and section 20a (2) to (11), inclusive, of this part, and section 214 of part II (which relate to issues of securities and assumptions of liability of carriers), including in each case the penalties applicable in the case of violations of such provisions. In the application of such provisions of section 20a of this part and of section 214 of part II, in the case of any such person, the Commission shall authorize the issue or assumption applied for only if it finds that such issue or assumption is consistent with the proper performance of its service to the public by each carrier which is under the control of such person, that it will not impair the ability of any such carrier to perform such service, and that it is otherwise consistent with the public interest.

“(4) It shall be unlawful for any person, except as provided in paragraph (2), to enter into any transaction within the scope of subparagraph (a) thereof, or to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more carriers, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or management accomplished or effectuated after the enactment of this amendatory paragraph and in violation of its provisions. As used in this paragraph and paragraph (5), the words “control or management” shall be construed to include the power to exercise control or management.

"(5) For the purposes of this section, but not in anywise limiting the application of the provisions thereof, any transaction shall be deemed to accomplish or effectuate the control or management in a common interest of two carriers—

(a) if such transaction is by a carrier, and if the effect of such transaction is to place such carrier and persons affiliated with it, taken together, in control of another carrier;

(b) if such transaction is by a person affiliated with a carrier, and if the effect of such transaction is to place such carrier and persons affiliated with it, taken together, in control of another carrier;

(c) if such transaction is by two or more persons acting together, one of whom is a carrier or is affiliated with a carrier, and if the effect of such transaction is to place such persons and carriers and persons affiliated with any one of them and persons affiliated with any such affiliated carrier, taken together, in control of another carrier.

"(6) For the purposes of this section a person shall be held to be affiliated with a carrier if, by reason of the relationship of such person to such carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or any other direct or indirect means), it is reasonable to believe that the affairs of any carrier of which control may be acquired by such person will be managed in the interest of such other carrier.

"(7) The Commission is hereby authorized, upon complaint or upon its own initiative without complaint, but after notice and hearing, to investigate and determine whether any person is violating the provisions of paragraph (4). If the Commission finds after such investigation that such person is violating the provisions of such paragraph, it shall by order require such person to take such action as may be necessary, in the opinion of the Commission, to prevent continuance of such violation. The provisions of this paragraph shall be in addition to, and not in substitution for, any other enforcement provisions contained in this part; and with respect to any violation of paragraphs (2) to (12), inclusive, of this section, any penalty provision applying to such a violation by a common carrier subject to this part shall apply to such a violation by any other person.

"(8) The district courts of the United States shall have jurisdiction upon the complaint of the Commission, alleging a violation of any of the provisions of this section or disobedience of any order issued by the Commission thereunder by any person, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain such person from violation of such provision or to compel obedience to such order.

"(9) The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraph (1), (2), or (7), as it may deem necessary or appropriate.

“(10) Nothing in this section shall be construed to require the approval or authorization of the Commission in the case of a transaction within the scope of paragraph (2) where the only parties to the transaction are motor carriers subject to part II (but not including a motor carrier controlled by or affiliated with a carrier as defined in section 1 (3)), and where the aggregate number of motor vehicles owned, leased, controlled, or operated by such parties, for purposes of transportation subject to part II, does not exceed twenty.

“(11) The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall have full power (with the assent, in the case of a purchase and sale, a lease, a corporate consolidation, or a corporate merger, of a majority, unless a different vote is required under applicable State law, in which case the number so required shall assent, of the votes of the holders of the shares entitled to vote of the capital stock of such corporation at a regular meeting of such stockholders, the notice of such meeting to include such purpose, or at a special meeting thereof called for such purpose) to carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under State authority; and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized

under the provisions of this section shall be and they are hereby relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transactions so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction. Nothing in this section shall be construed to create or provide for the creation, directly or indirectly, of a Federal corporation, but any power granted by this section to any carrier or other corporation shall be deemed to be in addition to and in modification of its power under its corporate charter or under the laws of any State.

“(12) If any provision of the foregoing paragraphs of this section, or the application thereof to any person or circumstances, is held invalid, the other provisions of such paragraphs, and the application of such provision to any other person or circumstances, shall not be affected thereby.

“(13) As used in paragraphs (2) to (12), inclusive, the term ‘carrier’ means a carrier by railroad and an express company, subject to this part; a motor carrier subject to part II; and a water carrier subject to part III.

“(14) Notwithstanding the provisions of paragraph (2), from and after the 1st day of July 1914, it shall be unlawful for any carrier as defined in section 1 (3), or (after the date of the enactment of this amendatory section) any person

controlling, controlled by, or under common control with, such a carrier to own, lease, operate, control, or have any interest whatsoever (by stock ownership or otherwise, either directly, indirectly, through any holding company, or by stockholders or directors in common, or in any other manner) in any common carrier by water operated through the Panama Canal or elsewhere with which such carrier aforesaid does or may compete for traffic or any vessel carrying freight or passengers upon said water route or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic; and in case of the violation of this provision each day in which such violation continues shall be deemed a separate offense.

“(15) Jurisdiction is hereby conferred on the Commission to determine questions of fact, arising under paragraph (14), as to the competition or possibility of competition, after full hearing, on the application of any railroad company or other carrier. Such application may be filed for the purpose of determining whether any existing service is in violation of such paragraph and may pray for an order permitting the continuance of any vessel or vessels already in operation, or may pray for an order under the provisions of paragraph (16). The Commission may on its own motion or the application of any shipper institute proceedings to inquire into the operation of any vessel in use by any railroad or other carrier which has not applied to the Commission and had the question of competition or the possibility of competition determined as herein provided. In all such cases the order of said Commission shall be final.

"(16) Notwithstanding the provisions of paragraph (14), the Commission shall have authority, upon application of any carrier, as defined in section 1 (3), and after hearing, by order to authorize such carrier to own or acquire ownership of, to lease or operate, to have or acquire control of, or to have or acquire an interest in, a common carrier by water or vessel, not operated through the Panama Canal, with which the applicant does or may compete for traffic, if the Commission shall find that the continuance or acquisition of such ownership, lease, operation, control, or interest will not prevent such common carrier by water or vessel from being operated in the interest of the public and with advantage to the convenience and commerce of the people, and that it will not exclude, prevent, or reduce competition on the route by water under consideration: *Provided*, That if the transaction or interest sought to be entered into, continued, or acquired is within the scope of paragraph (2) (a), the provisions of paragraph (2) shall be applicable thereto in addition to the provisions of this paragraph: *And provided further*, That no such authorization shall be necessary if the carrier having the ownership, lease, operation, control, or interest has, prior to the date this section as amended becomes effective, obtained an order of extension under the provisions of paragraph (21) of this section, as in effect prior to such date, and such order is still in effect."

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CHARLES CLARKE DUFFLEY

IN THE

# Supreme Court of the United States

October Term, 1943.

No. 31.

McLEAN TRUCKING COMPANY, INC., THE SECRETARY OF  
AGRICULTURE OF THE UNITED STATES, and AMERICAN  
FARM BUREAU FEDERATION, *Appellants*,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE  
COMMISSION, ASSOCIATED TRANSPORT, INC., BARNWELL  
BROTHERS, INC., *et als.*, *Appellees*.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR APPELLEES, ASSOCIATED TRANSPORT, INC.,  
BARNWELL BROTHERS, INCORPORATED, CONSOLI-  
DATED MOTOR LINES, INCORPORATED, HORTON MO-  
TOR LINES, INCORPORATED, McCARTHY FREIGHT  
SYSTEM, INC., M. MORAN TRANSPORTATION LINES,  
INC., SOUTHEASTERN MOTOR LINES, INCORPORATED,  
TRANSPORTATION, INCORPORATED, BARNWELL  
WAREHOUSE & BROKERAGE COMPANY, BROWN  
EQUIPMENT & MANUFACTURING COMPANY, CONGER  
REALTY COMPANY, and SOUTHERN NEW ENGLAND  
TERMINALS, INC.

MORTIMER ALLEN SULLIVAN,  
*Attorney for Above-named Appellees*,  
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Buffalo, New York.

CLAUDE A. COCHRAN,  
HUGH M. JOSELOFF,  
*Of Counsel*.

Dated: October, 1943.

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IN THE

# Supreme Court of the United States

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October Term, 1943.

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No. 31.

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MCLEAN TRUCKING COMPANY, INC., THE SECRETARY OF  
AGRICULTURE OF THE UNITED STATES, and AMERICAN  
FARM BUREAU FEDERATION, *Appellants*,

VS.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE  
COMMISSION, ASSOCIATED TRANSPORT, INC., BARNWELL  
BROTHERS, INC., *et al.*, *Appellees*.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

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BRIEF FOR APPELLEES, ASSOCIATED TRANSPORT, INC.,  
BARNWELL BROTHERS, INCORPORATED, CONSOLI-  
DATED MOTOR LINES, INCORPORATED, HORTON MO-  
TOR LINES, INCORPORATED, MCCARTHY FREIGHT  
SYSTEM, INC., M. MORAN TRANSPORTATION LINES,  
INC., SOUTHEASTERN MOTOR LINES, INCORPORATED,  
TRANSPORTATION, INCORPORATED, BARNWELL  
WAREHOUSE & BROKERAGE COMPANY, BROWN  
EQUIPMENT & MANUFACTURING COMPANY, CONGER  
REALTY COMPANY, and SOUTHERN NEW ENGLAND  
TERMINALS, INC.

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## Report of Opinion of the Court Below.

The opinion of the District Court, specially constituted  
according to Statute (R. 82-87), is set forth in 48 F. Supp.

933. Report of the Interstate Commerce Commission is found in 38 M. C. C. 137.

### **Jurisdiction.**

Appellants claim jurisdiction by this Court by virtue of Section 210 of the Judicial Code, as amended, 36 Stat. 1150, 38 Stat. 220 (Urgent Deficiencies Act of October 22, 1913), (28 U. S. C. 47a), and Section 238 of the Judicial Code as amended, 43 Stat. 938 (28 U. S. C. 345).

### **Questions Presented.**

The gravamen of this appeal is whether or not an order of the Interstate Commerce Commission, entered on March 16, 1942, as amended by its order entered June 8, 1942, in a proceeding approving the merger of certain common carriers by motor vehicle, constituting some of the above named appellees, applied the standards required by, and was otherwise in accordance with, Section 5 of the Interstate Commerce Act.

### **Statutes Involved.**

The statutes involved are Section 5 of the Interstate Commerce Act, as amended by the Transportation Act of September 18, 1940, 54 Stat. 898, 905-910 (49 U. S. C. 5); and the National Transportation Policy set forth in the said Act, 54 Stat. 899.

### **Statement of the Case.**

This action was brought by the plaintiff appellant, McLean Trucking Company, Inc., a common carrier by motor vehicle within part of the territory in which some of the defendant motor carriers, operate, against the United States of America and the Interstate Commerce Commis-

sion, Associated Transport, Inc., Arrow Carrier Corporation, Barnwell Brothers Incorporated, Consolidated Motor Lines Incorporated, Horton Motor Lines Incorporated, McCarthy Freight System, Inc., M. Moran Transportation Lines, Inc., Southeastern Motor Lines Incorporated, Transportation Incorporated, The Transport Company, Kuhn Loeb & Company, Barnwell Warehouse & Brokerage Company, Brown Equipment & Manufacturing Company, Conger Realty Company, and Southern New England Terminals, Inc., under the Urgent Deficiencies Act (38 Stat. 429, 21 U. S. C. A. Secs. 45 and 47a) to enjoin and set aside an order of the Interstate Commerce Commission which authorized the merger of the defendants, who are carriers by motor vehicle, and the issuance of securities in connection therewith. It was heard by a court of three judges, pursuant to the Statute.

The proceedings before the Commission were instituted by Associated Transport, Inc., a Delaware corporation which was organized for the purpose of bringing about the proposed merger and which was not then engaged in the transportation business. The carriers by motor vehicle it was proposed to merge operated as common carriers on regular routes and one or more of them served communities in Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, Ohio, New Jersey, Delaware, Maryland, the District of Columbia, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, and Louisiana.

There were two petitions which were consolidated for hearing (R. 9-10). The first was by Associated Transport, Inc., for authority under Section 5 of the Interstate Commerce Act (1) to obtain control through the purchase of their capital stock of the following eight common carriers by motor vehicle: Arrow Carrier Corporation, Pat-

erson, N. J.; Barnwell Brothers Incorporated, Burlington, N. C.; Consolidated Motor Lines Incorporated, Hartford, Conn.; Horton Motor Lines Incorporated, Charlotte, N. C.; McCarthy Freight System, Inc., Taunton, Mass.; M. Moran Transportation Lines, Inc., Buffalo, N. Y.; South-eastern Motor Lines Incorporated, Bristol, Va.; and Transportation Incorporated, Atlanta, Ga.; and (2) to consolidate into a unit for operation by itself the properties and rights to operate of the named carriers within one year from the date it should acquire the control of them. The second application was for authority to issue preferred and common stock to obtain funds needed to acquire the control of the named carriers and four associated non-carriers, viz., Barnwell Warehouse & Brokerage Company, Burlington, N. C.; Brown Equipment & Manufacturing Company, Charlotte, N. C.; Conger Realty Company, Charlotte, N. C.; and Southern New England Terminals, Inc., Taunton, Mass.

The Antitrust Division of the Department of Justice, the Secretary of Agriculture, four fruit growers associations and Super Service Freight Company, a common carrier by motor vehicle, intervened and opposed the applications. There were other intervenors who, however, stood indifferent except the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America which at the close of the hearings supported the applications.

In the instant proceedings there were extensive hearings before an Examiner, at which a large amount of evidence was introduced. After his proposed report was duly served on the parties, the intervenors who opposed the applications filed objections which were argued before the Commission which, after due consideration, made the order now under attack.

The Commission made findings on that the proposed consolidation would bring about economies and greater efficiency in operation; improvement in service; leave ample competitive motor vehicle carrier service in the territory affected; and be in the public interest within Section 5 of the Interstate Commerce Act.

After the suit was brought and the answer of the Commission was filed, it was amended to allege, what is now undisputed, that because of the failure to carry through negotiations for the acquisition of the stock of the Arrow Carrier Corporation, the applicant petitioned the Commission for a modification of its order to exclude that carrier from the merger authorized, and that was done by order entered June 8, 1942. All phases of this controversy which resulted from the inclusion of Arrow in the authorized consolidation are, therefore, eliminated.

Arrow Carrier Corporation, a common carrier operating principally in the State of Pennsylvania, was included in the application to the Interstate Commerce Commission. Its stock was and had been for nearly a year under option to Kuhn, Loeb & Co., investment bankers, New York City. It had not originally been included in the merger but was added a few days before the application was filed with the Interstate Commerce Commission to fill a gap in the proposed integrated service. The aforesaid option expired December, 1941, and the owners of the Arrow Company refused its renewal. The Commission was at all times apprized that any contract right to its inclusion was predicated upon the approval of the merger by the Commission before the option expired, and after that time upon the ability of Kuhn, Loeb and Arrow Carrier stockholders to get together on a price. The Commission's order of March 16, 1942 contemplated Kuhn-Loeb's inability to complete its contract to deliver Arrow Carrier stock to Associated. Upon the Commission's approval of the merger, Kuhn, Loeb was unable to perform, and Associated Transport, Inc., being desirous of simplifying this litigation, and for other proper purposes to conform its acquired authority to the existing facts, by petition dated May 22, 1942 sought an amendment to the Commission's order of March 16, 1942 eliminating the Arrow Carrier transaction and the accompanying stock authorization from the order and its books. Such amendment was granted (R. 71). As shown in the petition (R. 67-69), which is an exhibit certified to the Court by the Commission in this case, J. S. Arnold, who had represented Kuhn, Loeb on Associated's Board of Directors, had resigned from the Board of Directors of Associated Transport.

The United States answered by confessing error and praying for a decree setting aside the Commission's order. The other defendants answered joining issue and praying that the complaint be dismissed. Their right so to do was not affected by the confession of error by the United States, and the issues thus raised are still open. 28 U. S. C. A. Sec. 45 (a); *Interstate Commerce Commission vs. Oregon-Washington R. R. Co.*; 285 U. S. 14. The District Court dismissed the complaint the 28th day of December, 1942 (R. 89).

### **Specification of Errors Urged by Appellants.**

Appellants urge that the Court below erred in that it did not set aside the order of the Interstate Commerce Commission on the grounds:

A. That the Commission's order was erroneous because it made its determination by the standard of what it determined was adequate transportation facilities in the public interest under the criteria prescribed in the Interstate Commerce Act without deciding that its order would not result in a consolidation that would violate the provisions of either the Sherman or the Clayton Acts.

B. That the Commission erred in failing to make findings that the consolidation would be consistent with the Sherman and Clayton Acts as those Acts have been construed generally.

C. That the Commission erred in making a decision which it is claimed is not in accordance with the National Transportation Policy as stated in the Transportation Act of 1940, and otherwise not in accordance with said Act.

D. That the Court below erred in deciding that the elimination of Arrow Carrier Corporation from the merger in the Commission's amended decision giving effect

to the same removed questions respecting Arrow Carrier Corporation.

E. That the Court below erred in determining that the Commission's findings of fact were supported by evidence, and the Commission's decision was otherwise in accordance with the applicable law and was valid.

## Summary of Argument.

### I.

The Commission's order authorizing this merger applied the standards and contained the findings required by law and was in accordance and consistent with the standards and criteria prescribed by the Transportation Act of 1940 with respect to motor carriers. This is confirmed by the wording of this Law and the legislative history of the same.

### II.

The Commission's findings of fact are amply supported by the evidence before it.

## ARGUMENT.

### I.

**The commission's order authorizing this merger applied the standards and contained the findings required by law.**

Among the earliest attempts to regulate transportation for the public weal were the passage of laws directed specifically at preventing monopoly and the restriction of competition in this field <sup>1A</sup>. Three years later these laws were followed by the Sherman Act<sup>2</sup> which went beyond

<sup>1A</sup> Interstate Commerce Act, 1887, Section 5, 24 Stat. 380.

<sup>2</sup> Sherman Act, 1890, 26 Stat. 209.

the field of transportation and was applicable to all businesses. This latter statute, was amplified by its companion, the Clayton Act and the two as amended, are commonly called the Antitrust Acts and depend upon their penal nature to bring about the conduct of business for the public good. Until the passage of the Transportation Act of 1920,<sup>2A</sup> they were applied and enforced impartially in the field of transportation and the field of general business.

With the adoption of the Transportation Act of 1920, there was made a new approach to the field of transportation regulation. The effect which Congress has heretofore directed to the passage of restrictive measures calculated only to suppress and minimize demonstrated harmful practices was turned to new channels. Now a position of positive public responsibility towards the fostering and maintenance of an improved transportation service was unmistakably indicated. Regulation for the first time clearly charged the Interstate Commerce Commission with constructive functions.

During the war period and when the railroads were under Federal control, valuable experience had been gained in the unified operation of the lines. As a result of this experience and in keeping with the more progressive method of attacking transportation problems, there was a sharp modification in the Transportation Act of 1920 of the traditional emphasis upon enforced competition.<sup>4</sup> The rigid prohibitions of the antipooling clause of the former Act to Regulate Commerce, and which prohibitions were the ancestors and genesis of the Antitrust Laws, were modified and relaxed. Congress, however, went much further and enacted Section 5 (8) by which the carriers, having

<sup>2A</sup> 41 Stat. 456.

<sup>4</sup> Edgar J. Rich, "The Transportation Act of 1920," *American Economic Review*, Vol. 10, pp. 507-521.

<sup>5</sup> Sharfman, "The Interstate Commerce Commission," Vol. 1, p. 183.

secured the Commission approval to combinations or co-operative arrangements, were specifically relieved from the operation of the Antitrust Laws as well as all other restrictions of state and federal statutes to any extent necessary to effectuate such approved combinations or arrangements. In the 1920 Act, no express limitations were imposed upon the Commission's exercise of its discretion insofar as granting authority for the acquisition of stock was concerned. A blanket finding of "public interest" was all that was prescribed for Commission guidance. Respecting mergers, provision was made that approval be conditioned upon their coming within a blueprint of a national plan for coordinated service which the Commission was charged with developing. For many reasons, including the tremendous nature of the task, the time element entering therein and during which rail relationships could not remain static in the face of changing transportation needs and conditions, and the existence of other avenues under the Law which permitted such changes in relationship, the blueprint was not produced until 1929<sup>7</sup> and was never put into effect. Indeed at various times the Commission indicated its desire to be relieved of the necessity for formulating such a plan<sup>8</sup>.

By 1933 the economic condition of the rails had become such that Congress passed the Emergency Transportation Act of that year<sup>9</sup>. The "recapture clause" was repealed

<sup>7</sup> *United States vs. Southern Pacific Co.*, 290 Fed. 443 (1923). *Control of D. S. & S. R. R. by Lehigh Valley R. R.*, 86 I. C. C. 367 (1924). *U. S. v. Lehigh Valley R. R. Co.*, 254 U. S. 255 (1920).

<sup>8</sup> Sharfman, "The Interstate Commerce Commission", Vol. 2-A, pp. 430-431. *New York Central Securities Co. vs. United States*, 287 U. S. 12 (1932).

<sup>9</sup> 159 I. C. C. 522; 185 I. C. C. 403.

<sup>10</sup> For example see Letter of Interstate Commerce Commission to Chairman of Interstate Commerce Committee of Senate, Feb. 4, 1925, reading in part: "that results as good or perhaps better are likely to be accomplished with less loss of time if process of consolidation is permitted to level off under guidance of the Commission in a more normal way".

<sup>11</sup> 48 Stat. 220.

retroactively and the provisions for acquisitions and combinations were combined and both made subject to the requirement of a Commission finding that such transactions would "promote the public interest" and be in accordance with the consolidation plan. The enactment of this legislation in 1933 indicated no change in Congressional policy<sup>10</sup>. By the same Act of 1933, provision was made for a Federal Coordinator.

During the late nineteen-twenties and prior to the passage of the Emergency Transportation Act, motor freight and bus transportation had assumed proportions of national importance. No less than 34 bills had been introduced in Congress to regulate such transportation. The decisions of this Court in *Buck vs. Kygkendall*, 267 U. S. 307; and *Busb Co. vs. Maloy*, 267 U. S. 317, had helped crystalize sentiment for regulation among the states<sup>11</sup>. The dangers of unrestrained and oversupplied competition in the motor field recalled the early days of the railroads<sup>12</sup>. The problem was examined by the Commission and the Federal Coordinator<sup>13</sup>, and a bill to amend the Interstate Commerce Act to include the regulation of trucks and busses became law in 1935<sup>14</sup>.

The very essence and nature of the Motor Carrier Act of 1935, with its "grandfather clause", freezing operating

<sup>10</sup> *Texas vs. United States*, 292 U. S. 522.

<sup>11</sup> Proceedings of National Association of Railroad & Utility Commissioners, 1925 through 1934 inclusive.

<sup>12</sup> State Regulation of Interstate Commerce Carriers, "Michigan Law Review", Vol. 31, pp. 926-952, 1097-1111. "The present demoralization of interstate commerce transportation, due to unsound competitive practices, and the menace of such unrestricted competition to the integrity of the national transportation system as a whole create problems that call imperatively for federal legislation."

<sup>13</sup> Motor Bus and Motor Truck Operation, 140 I. C. C. 685 (1928); Coordination of Motor Transportation, 182 I. C. C. 263 (1932); Sen. Doc. No. 43, 72d Cong., 1st Sess.; Regulation of Transportation Agencies, 73d Cong., 2nd Sess.; Sen. Doc. No. 152 (1934); Transportation Legislation, 74th Cong., 1st Sess.; House Doc. No. 89 (1935).

<sup>14</sup> 49 Stat. 543.

rights as of a date prior to the passage of the Law, was both a restriction and a limitation on competition. It could be nothing else, and that it contained a safety valve against undersupply of competition in the provisions of Section 206 relating to the granting of new certificates is no indication to the contrary. Much of the impetus for the passage of the Law came from the Federal Coordinator's testimony and reports to the Senate:

"The most important thing, I think, is the prevention of an oversupply of transportation; in other words, an oversupply which will sap and weaken the transportation system rather than strengthen it.<sup>15</sup>

"The public interest in transportation may, then, be summarized as requiring at least the following:

(1) The minimum of outright duplication of facilities or services; (2) A transportation system which is well organized and functions in an orderly, dependable way, other than one which is unstable, uncertain and a breeder of discriminations; (3) Responsibility in both the narrow and broad sense indicated above; and (4) Financial stability and good credit.

"Both (contract and common carrier by truck), but especially the common carrier, are continually faced with actual or potential competition from private truck operation, whether it be by industries, commercial or shipper organizations, or farmers."<sup>15A</sup>

The unification provisions of the 1935 Act were contained in Section 213 thereof, and this Section was, except for the provisions respecting the plan for railroad consolidation and certain other parts which were clearly inapplicable, lifted almost bodily and verbatim from the Transportation Act of 1920, *as amended*, (including the amendments contained in the Emergency Transportation

<sup>15</sup> Testimony of Joseph Eastman, Chairman of Interstate Commerce Commission and Federal Coordinator of Transportation, before the U. S. Senate on bills to amend the Interstate Commerce Act, 74th Cong., 1st. Sess., Part I, p. 78.

<sup>15A</sup> Report of Federal Coordinator of Transportation, Sen. Doc. No. 152, 73d Cong., 2nd Sess.

Act of 1933). One significant change, clearly indicative of the Congressional intent to smooth the path and encourage the road to integrations and mergers, must be noted. Whereas in the Railroad Act of 1933 the criteria and requirement which the Commission was to apply in approving mergers was that they should "*promote the public interest*", Congress, in adapting this legislation for motor carriers, made the test far easier to meet and specified that the requirement and criteria for approval of mergers solely between motor carriers was simply that the Commission should find the proposed merger would be "*consistent with the public interest*".

Nor can any argument of substance be made that the Congressional choice of such language was without design and deliberation for, having chosen such test for motor carriers, it added a proviso that if any carrier other than a motor carrier were involved, the requirement and criteria for approval must be that the public interest will be *promoted* by such carrier being thus enabled to use the service by motor vehicle to public advantage and that the transaction *will not unduly restrain competition*<sup>16</sup>.

As a further indication of the understanding of Congress of the transportation problems involved at the time of the passage of this Law, we may note the explanation of Senator Wheeler, spokesman for the Committee on Interstate Commerce, of the purpose of including consolidation provisions<sup>17</sup> in the law. The Senator asserted that while most truck operators were small, there were rumors of expansions into large systems. He said that in view of the history of railroad and public utility unifications prior to regulation of those enterprises, it was desirable to exercise control over such developments where they were of such size as to make the matter territorially important.

<sup>16</sup> Transportation Act of 1940, Section 5 (2) (1).

<sup>17</sup> Congressional Record (74th Cong., 1st Sess., Vol. 79, pp. 5654-5).

Senator Wheeler also discussed the restrictions on rail-truck mergers, including the requirement that they must not unduly restrain competition. He said, "With this limitation, it will be permissible for the Commission to allow acquisitions which will make for a coordinated or economical service and at the same time protect the public against monopolization of highway carriage by rail, express or other interests."<sup>18</sup>

These statements were repeated in substance to the House of Representatives by Representative Sadowski.<sup>19</sup>

It would seem that the wisdom of having the Interstate Commerce Commission assume such control was uncontested in Congress, which gave its attention to providing machinery for accomplishing this purpose. Any argument that the primary concern of Congress was the preservation of the spirit, letter or machinery of the Antitrust Laws, or that the development of the Industry was to be or could be promoted or controlled within the framework or criteria of such Laws, is completely answered by the language of Section 213 and the placing of the control of such unifications in the hands of the Commission where it was obvious transportation criteria, as defined by the settled law<sup>20</sup>, would be applied. Such action was wholly consistent with the disposition which it made of the rails, problems in the same law and in accordance with the repeated suggestions and requests of the Commission. Had Congress intended that regulation on the growth of the Industry should be undertaken by the Antitrust Division or that the application of the Antitrust Laws and their

<sup>18</sup> Congressional Record (74th Cong., 1st Sess., Vol. 79, pp. 5654-5).

<sup>19</sup> Congressional Record (74th Cong., 1st Sess., Vol. 79, p. 12206).

<sup>20</sup> Transportation criteria have been held to include considerations of adequate, economical efficient, necessary and appropriate transportation service in which facilities are put to the best use. *N. Y. Securities Corp. vs. U. S.*, 287 U. S. 12.

criteria would accomplish the public purpose of providing a proper transportation system, there would have been no necessity for the passage of Section 213 or Senator Wheeler's remarks on that subject, since in the absence of such provisions the Antitrust Laws would have been fully applicable<sup>20A</sup>. The statements of the Senator indicate plainly Congressional knowledge of the contemplation of sizable mergers of motor truck lines and the Congressional intent to control, through the Interstate Commerce Commission, but not to hinder such natural development.

Turning to the Transportation Act of 1940, which Act covers the instant case, it is not only self-evident but appellants concede and assert that the provisions of the unification section thereof (Section 5) are nothing more or less than the language of Section 213 of the Motor Carrier Act of 1935 with such minor adaptations as were necessary to relate its provisions to all types of carriers<sup>21</sup>.

But it is equally self-evident, as we have previously seen, that the language of Section 213 of the Motor Carrier Act of 1935 is nothing more or less than the language of Section 5 of the Transportation Act of 1920, as amended.

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<sup>20A</sup> Conversely, if it was the expectation of Congress that the Commission would or should apply the Antitrust Laws in passing upon combinations and mergers, the explicit prohibition against approval of rail-truck mergers, without finding that they will not unduly restrain competition, becomes incomprehensible.

<sup>21</sup> 49 Stat. 543, 555, 54 Stat. 898, 905.

Provisions for conforming integration of rails to a general plan were repealed and eliminated in the Transportation Act of 1940, principally because of the situation illustrated in the Report of the Committee of Six appointed September 20th, 1938 by the President of the United States:

"The fact that consolidation of railroads has not been carried out to an even greater extent is in our opinion ascribable to two factors. Prior to 1920 it was retarded by the prohibitions of the Antitrust Laws. Since that date it is hampered by the unduly restrictive provisions of Section 5 of the Interstate Commerce Act with their requirement for a rigid plan developed in accordance with a prescribed formula, which militates against any results that are not highly artificial and unattractive."

through 1933, and with such minor adaptations and omissions as were necessary to relate its provisions to motor carriers.

With this clearly understood, it becomes plain that the policy of Congress, since it first undertook to assume a position of positive public responsibility towards the fostering and maintenance of a stable and improved national transportation system in 1920 and entrusted to the Commission constructive functions, has hewed constantly to that line. Contentions in the briefs of the appellants to the effect that the repeal of requirements for a plan of consolidation, the recapture clause, and the like, rather than indicating a change of basic policy, indicate only the Congressional trend towards entrusting to the Commission, in its wisdom and experience, the carrying out of the National Transportation Policy within the broad framework of the specific Congressional enactments.<sup>22</sup>

We fail to perceive how repeated extraneous and prejudicial references to right-of-ways being owned by railroads are any indication that the courts or the Commission should discriminate in favor of such competing form of transportation or that the Commission and the courts, in construing the language of Section 5-11 of the Transportation Act of 1940, should attach to such language its clear meaning in dealing with a merger between railroads but, in considering a merger solely between motor trucks,

<sup>22</sup> Forensic devices, such as cutting off investigation of the heredity of Section 5 in 1935 by making comparisons of the Motor Carrier Act of 1935 with the Transportation Act of 1920 and eliminating from such consideration the amendments through 1933, should be too transparent to require rebuttal. Standing in the same category is the argument that Sections 5-11 does not relieve the Commission from applying and giving effect to the Antitrust Law and is operative only upon the carriers and not upon the Commission. If such reasoning can be used to support a claim that the Commission should apply the Antitrust Laws, it would seem to imply an equal obligation on the Commission to apply and enforce "all other restraints, limitations and prohibitions of federal, state or municipal law." (Sec. 5-11.)

should lay aside the body of decisions dealing with this language over twenty years and find that the same language in the same section of the same law means something else as to motor carriers.

In entrusting the destiny of motor truck transportation to the Interstate Commerce Commission, Congress in 1935 and again in 1940 provided in the phrase "consistent with the public interest" the basic criteria for weighing approval of unifications<sup>23</sup>. The Commission has consistently held since 1935 that a unification transaction may be consistent with the public interest "without being required by public convenience and necessity"<sup>24</sup>. Guided by the pronouncements of the Court in *New York Central Secur-*

<sup>23</sup> Section 213, Motor Carrier Act of 1935; Section 5 (2) (1), Interstate Commerce Act of 1940.

<sup>24</sup> One implication of the appellants' contention with respect to their tortured meaning of the word "adequate" would be that Congress intended it should be read as a requirement of a showing of "public convenience and necessity". The answer to this, of course, is when Congress meant public convenience and necessity, it said so in so many words as, for example, in Sections 206 and 207 of the Interstate Commerce Act, as well as the corresponding Sections in the Motor Carrier Act of 1935, and which Sections provide for the showing to be made when it is sought to inaugurate new operations by motor truck. The considerations of requirements of public convenience and necessity have, since the passage of the Motor Carrier Act, been held by the Commission to deal only with the question of whether or not an original certificate to operate should be granted and that they have no place in unification proceedings. *Horlicher Delivery Service, Inc.—Purchase*, 35 M. C. C. 149 (1940); *Henria Transport Co.—Purchase*, 35 M. C. C. 88 (1939); *Trans-American Freight Lines, Inc.—Purchase*, 5 M. C. C. 712 (1938); *Keeshin Motor Express Co., Inc.—Leases*, 1 M. C. C. 373 (1936). In *Baggett Transp. Co.—Purchase*, 36 M. C. C. 659, the Commission stated:

"Nor are we authorized in a proceeding under Section 5 to order the issuance of our certificate to cover the acquired intrastate operation. Section 206 provides exclusive method and the sole standards by and under which we may issue a certificate. The primary standard there established is the existence of public convenience and necessity. The standard for our approval under Section 5 is consistency with the public interest. \* \* \* Public convenience and necessity, as we have frequently defined it, ordinarily requires a higher degree of proof than mere consistency with the public interest, and usually contemplates an entirely distinct set of circumstances."

*ities Co. vs. United States (Supra)*, *Texas vs. United States (Supra)*, *United States vs. Lowden*, 308 U. S. 225 (1939), and other cases as to the elements of public interest, they have made improved public transportation their primary aim, and in so doing have given effect to the National Transportation Policy, as expressed in the Act, of providing for fair and impartial regulation of all modes of transportation, so administered as to recognize and preserve the inherent advantages of each, thus promoting safe, adequate, efficient service and fostering sound economic conditions in transportation and among the several carriers, to the end of developing, coordinating and approving a National Transportation system by water, highway and rail adequate to meet the needs of commerce. As charged by the Statute, they have administered and enforced the provisions of the Act with the view of carrying out the declaration of policy<sup>25</sup>.

While Congress with design, having in mind the decisions of the Commission and the courts, expressed no specific restrictions on the manner and extent to which the Commission might permit elimination of competition in situations solely between motor carriers, nevertheless the Commission, in applying the test of "consistency with the public interests", has recognized that undue elimination of competition could be inconsistent with or inimicable to the public interest. They have recognized that acquisitions and mergers between motor carriers could be carried to a point in given cases where the elimination of competition resulting therefrom would be "inconsistent with the public interest". Stated another way, competition in a given case could be reduced to the point where it interfered with the spirit and purposes of the Transportation Act, just as undue restraints on the elimination of competition can

<sup>25</sup>Transportation Act of 1940, Section 202; 54 Stat. 899.

thwart the public purpose of that Act and stultify and hamstring the Interstate Commerce Commission in its effort to provide the country with improved transportation service. In various cases since the passage of the Act in 1935 applications have been denied on the ground of undue elimination of competition.<sup>26</sup> The Commission has also recognized that under the Motor Carrier Act of 1935 and the Transportation Act of 1940 something more than elimination of competition is necessary for disapproval. In the field of transportation, elimination of competition may not only be compatible with the public interest but directly in the public interest, and in the motor truck industry, characterized as it is by severe and excessive competition both within and without, any danger of monopoly is indeed remote. Notwithstanding this situation, in the *Transport case* (*Supra*), a unification of twenty-nine motor carrier companies, the Commission was imbued with such caution that, having expressed "doubt" as to the sufficiency of retaining competition, it added this doubt to its long list of reasons for denial. Perhaps it was the fact of such inclusion, or perhaps a result of the undue emphasis on this aspect of the case by the appearance and activity of the Anti-trust Division, which led the Commission, on the different facts in the instant case, specifically to set forth its finding that there would remain ample competitive motor carrier service through the territory involved (R. 32) and that "the proposed transaction would not result in undue restraint of competition" (R. 37). In any event, such a finding, although not required by statute, has the beneficial effect of giving direct expression to the result.

<sup>26</sup> *Northland Greyhound Lines, Inc.*, 5 M. C. C. 123 (1937); *Eastern Michigan Transportation Corp.*, 25 M. C. C. 483 (1939); *Richmond Greyhound Lines, Inc.*, M. C. F. 119 (1941); and *Transport Company—Control—Arrive Cabot Corp.*, 36 M. C. C. 61.

of considerations given *weight*<sup>27</sup> by the Commission in every merger case under its conception of "consistency with the public interest" since it was charged with the regulation of the trucking industry in 1935, and thoroughly reconciles any finding of elimination of substantial competition with the finding that the merger is consistent with the public interest:

The shippers, the farmers, the general public, and the trucking industry itself would indeed face a bleak transportation future were there to be general acceptance of a way of thought which conceives regulation solely from a policeman's or prosecutor's perspective. Was it the theory of Congress in providing for motor truck legislation that this great young and growing industry should be

<sup>27</sup> Having arrived, by a series of forced marches, to the unfortified position that Congress, by the passage of the Transportation Act of 1940, had reverted to the turn of the century and evidenced an intention to substitute the inflexible restrictions of the Antitrust Laws for the admitted progressive policy of coordination, construction and improvement through the agency of the Interstate Commerce Commission, and the application of transportation criteria to regulation in the transportation field, appellants follow with the pseudo-corollary allegation that no merger may be approved unless in no other way can the public be insured of adequate transportation service. They thereupon reached the conclusion that the Commission erred in failing to make a finding that the existing motor carrier service is inadequate (in the sense of "insufficient") before approving the merger. It is submitted that this is only another way of urging that it was the intention of Congress that it be the primary obligation of the Commission to enforce and administer the Antitrust Laws in merger proceedings rather than Section 5 of the Transportation Act. The courts have interpreted the Antitrust prohibitions as meaning that "unreasonable" restraints are forbidden. The appellants' insistence on such a finding again seems another way of stating that in the absence of such a finding a merger is an unreasonable restraint of trade and a violation of the Antitrust Laws. It is to be noted, however, that the language used by Congress in the Transportation Laws when referring to restraints of competition is "unduly restrain competition". If appellants, as did Mr. Thurman Arnold on the oral argument of this case (R. 427), suggest that the words "unduly" and "unreasonable" are interchangeable, then we submit that the Commission's finding (R. 37) "that the proposed transaction would not unduly restrain competition" has fully satisfied appellants' objection: *Appalachian Coals, Inc., et al. vs. United States*, 288 U. S. 344 (1933).

frozen in its then state of development, and that if such state of development provided *barely* "adequate" (or "sufficient") service, then regardless of potential improvements and betterments, these must be denied to it, because the appellants would give to the Anti-trust Laws, passed at the turn of the century and intended for the regulation of then unfettered and unregulated businesses, the force and effect of amendment to the Constitution.<sup>28</sup>

While it is clear that the Commission in a proper sense has both directly and impliedly found that service available prior to the merger was inadequate compared to the betterments available and that the granting of the application would bring about adequate service, stripped of their camouflage the appellants' arguments are disclosed as a complaint that the language used in respect to the finding is "consistency with the public interest" rather than "adequacy of service". It is equally clear from the Statute that the technical requirement, if any, with respect to the use of words which Congress placed upon the Commission in Section 5-(2) was only to make findings as to "consistency with the public interest".

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<sup>28</sup> It must be at all times remembered that the trucking industry is completely regulated as to its rates, fares, charges, practices, accounting, and operations, not only by the Interstate Commerce Commission but in great part and even to the point of confliction in regulatory processes by the Public Utility Commissions or other bodies in the separate states in which it operates as well. Recently to this mass of regulation has been added the detailed and exacting requirements of the Office of Defense Transportation (Executive Order No. 8939, December 18, 1941), and the Antitrust Division, through its claimed powers under the Antitrust Laws, insists that steps taken to comply with the orders of the O. D. T. be confined only to acts meeting the Division's approval and has for that purpose adopted what amounted to rules and regulations pertaining thereto, thus asserting broad, effective and restrictive powers of regulation over transportation even in the present emergency.

## II.

**The Commission's findings are amply supported by the evidence.**

The purpose of this cooperative merger venture by the owners of the seven lines involved, as described by them at various times in the proceedings, was

(1) To offer to the public a complete and speedier service in a large but somewhat sharply defined area along the eastern seaboard.

(2) To be a unit of sufficient size as to make possible public financing for working capital.

(3) To be of sufficient size to command reasonable purchasing power in the acquisition of equipment supplies, insurance and credit.

(4) To obtain geographical spread of the risk of fluctuations and the flow of freight, and to be in a position to compete for freight diverted from the north to the south or vice versa by industrial shifts.

(5) To increase the load factor and otherwise utilize equipment and facilities more intensely so that the present extraordinarily increased business may be handled without proportionate increase of equipment. This increase of equipment would be neither financially sound nor financially possible.

(6) To secure a more intensive use of equipment and facilities by increasing the load factor, and to "turn over" capital more rapidly and thus increase profits and avoid useless and wasteful obsolescence and to utilize technological improvements sooner and more fully.

(7) To be enabled to compete more evenly with rail, carloading, express and water carriers who enjoy many advantages of financing and coverage not possessed by

the truck lines individually, as well as to prepare to meet intensified airplane competition which seems just ahead.

(8) To effectuate economies of operation so that present rates may be maintained, lowered or held within reasonable competitive limits in the rapidly rising market of supplies and labor.

(9) To insure, for years to come, competent and experienced management of these properties against the hazards of death and disability.

(10) To create some kind of a market for the preferred stock in which cash could be obtained to pay inheritance taxes upon the death of any major stockholder of one of these companies and thus avoid the necessity of a forced sale of at least a substantial interest to carriers by rail, who doubtless would be the only source of funds at such a time.

(11) To accomplish all of the above with no elimination of competition other than that presently within the group, and which elimination is necessary, desirable and incidental to the major purpose of preserving and perpetuating these businesses and fostering a finer, sounder and more desirable system of transportation by motor truck in the territory and in the public interest.

Such purposes were entirely in harmony with the National Transportation Policy "to promote safe, adequate, economical, efficient service, and foster sound economic conditions in transportation and among the several carriers \* \* \*, all to the end of developing, coordinating and preserving a national transportation system by water, highway and rail \* \* \* adequate to meet the needs of commerce of the United States, Postal Service and of the National Defense."<sup>29</sup>

<sup>29</sup> Transportation Act of 1940, Section 202; 54 Stat. 899.

Consistent with the testimony, the Commission found, among other things, that the consolidation would result in improved transportation service, that through movement of freight would be simplified and expedited, equipment would be fully utilized, terminal facilities improved, handling of shipments reduced, relations with shippers and public regulatory bodies simplified, safe operation promoted, that consolidation would result in substantial operating economies,<sup>30</sup> ample competition would remain, and competition would not be unduly restricted.

<sup>30</sup> In the brief of the appellant, Secretary of Agriculture, there is cited the Report of the Interstate Commerce Commission in *Increased Common Carrier Truck Rates in the East*, 42 M. C. C. 633, 646. Apparently this case is cited as a vehicle for the amplification of the record certified to this Court by the District Court to the extent of showing that losses were sustained by Associated Transport during its first three months of combined operation. We desire to italicize the Commission's expression of opinion to the effect that "economies and increased efficiency of combined operation cannot be put into effect immediately". It must be recognized that reduction of cost flowing from increased purchasing power and substantial changes in terminal setups were projected in 1941, prior to the war, and to be accomplished under conditions of peace. Critical shortages of building materials, operating labor and rolling stock tend to increase cost almost in proportion to the needs of larger companies compared to smaller ones. Unfortunately in this rate case the 1942 annual reports of the predecessor companies prior to combined operation were before the Commission. Such reports do not disclose the operating results of the individual constituent companies in the last few months to combined operations.

Since the appellant, Secretary of Agriculture, has chosen to refer to this case, we submit that the ultimate significance of the citation is that the Commission's language and tables attached to the decision demonstrate the continued growth and prosperity of the smaller carriers in the territory, particularly in the area formerly served by the Horton and Barnwell Companies, and the reduction in the gross business of Associated as compared to its constituent companies. The figures demonstrate no lack or restraint of competition nor any other of the adverse effects on independent truckmen prophesied by appellants.

In reading this decision, one should mark, as substantiation of the fears and reasons which impelled the seven companies to embark on this merger, that Arrow Carrier Corporation (now divorced from both Associated and Kuhn, Loeb & Co. and whose operations were concededly uncompetitive with Associated) met serious reverses and lost substantial money for practically the first time in its history.

Proof of anticipated economies and improvement of service necessarily must be of a *pro forma* or opinion character.<sup>31</sup> Testimony as to anticipated results can only be weighed in the light of qualifications and experience of the witnesses. The Interstate Commerce Commission, being a body itself experienced in regulating transportation, should be peculiarly qualified to weigh such testimony. Some of the companies involved in the application had achieved a considerable measure of success in a chaotic industry and had had experience in other mergers, and thus their operating heads were adequately qualified as outstanding experts in the field of truck transportation. The fact that they, the most substantial stockholders themselves in the constituent companies, were so convinced of the merits and necessity of effectuating this cooperative merger that they were willing to pool their stock and voluntarily surrender highly remunerative long-term contracts constituted irrefutable evidence of the sincerity of their testimony.<sup>32</sup>

<sup>31</sup> In one instance it was possible to give direct testimony of anticipated savings, and this was in the case of insurance. B. M. Seymour testified (R. 578) to firm offers from insurance companies which would bring about direct annual savings of over \$250,000.

<sup>32</sup> It is stated in the brief of appellant McLean that to prevent competition arising in the future, the companies involved had made long term contracts with the principal operating heads of said companies. This is not true. The record discloses and the Commission found (R. 44) that the seven companies, party to this merger, have no contracts and that such of these companies as had contracts brought about the cancellation thereof prior to the application to the Commission, even though in some cases there were contracts having many years to run which had already been approved in other mergers by the Commission. Because of the strained relationship between Arrow Carrier and Kuhn, Loeb and Associated Transport, contracts were intended to be made with the heads of that company (R. 44). The fact that Arrow could not be included removed such question.

The appellant McLean also urges the Court that to insure a monopolistic position, requirement was made in the merger contracts that consummation be conditioned upon the inclusion of five of the original eight carriers. This statement also is not in accordance with the facts. A reading of paragraph

The testimony of traffic managers, representative of large and small shippers throughout the territory, confirmed and supported the testimony of the operators as to the necessity for and the desirability of the merger. Many of these shippers were officers or directors of influential traffic groups, chambers of commerce, and other public organizations interested in improved transportation service. Uniformly these expressed themselves as not being fearful of monopoly or other deleterious effects on competition.<sup>33</sup>

Any statement to the effect that there would exist no motor carrier competitor of Associated Transport shows a fundamental misconception of the nature of the trucking business. Appellants (but not the Interstate Commerce Commission) lose sight of the fact that the main volume of Associated's traffic will and must move in the future in the same parts of the territory and between the same points and places as it has moved in the past. The hun-

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15 of the merger contract (R. 173), and the succeeding paragraphs show that the consummation of the merger was not finally conditioned upon the inclusion of any particular company. Under the contract the Commission's failure to include any of the five companies simply permitted any of the companies, the merger of which might be approved, to review the situation in the light of the Commission's decision and then determine whether they wished to continue in or withdraw from the merger. This being a co-operative venture, balance of power, and submersion of identities were of natural importance to stockholders. In no other way could a firm contract be submitted to the Commission and at the same time could protection be afforded against dominance by a single company. For example, under a firm contract, without such protection, if the Commission approved only the merger of Horton, McCarthy and Moran, Horton under the stock distribution formula would have about sixty per cent of the stock and clear control. Such a situation might and probably would have been unacceptable to McCarthy and Moran. At least it was desirable to reserve decisions as to whether such bridges would be crossed.

<sup>33</sup> A partial list of such witnesses include J. R. Hester (R. 788), John V. Hoey (R. 805), H. A. Faivre (R. 816), W. E. Greer, Jr. (R. 833), Samuel Evans, Jr. (R. 879), Frank Korinek (R. 883), Charles H. Vayo (R. 887), V. R. Tupper (R. 892), Paul Stevens (R. 901), J. J. Autrey (R. 905), E. J. Davis (R. 909), S. V. Rettino (R. 918), C. A. Glymph (R. 934).

dreds of carriers, large and small, outside the merger who constitute the motor truck competition to the constituent companies will continue to constitute such competition.<sup>23A</sup> Their competition may even become substantially more effective since not only is it a natural tendency for smaller lines to gang up on larger ones but, as the shippers testified and the Commission found (R. 34), it is a general practice of shippers to spread their business among two or more lines, with the result of a reduction in busi-

<sup>23A</sup> The evidence denying the competition of the merger from hundreds of motor carriers throughout the territory was voluminous and complete. Appellant McLean in his brief is critical of the one of the Commission's methods of illustrating Associated's relationship to remaining competition by comparisons of the total gross revenue of the constituent companies of Associated having all or any substantial part of their operations in a given territory with the total gross revenues of other truck lines having all or a substantial portion of their operations in the same territory, as, for example, the comparison (R. 25) between the combined revenues of Consolidated and McCarthy in New England of \$6,000,000 with the combined revenues of other Class I carriers in the territory of \$40,000,000. Undoubtedly not all this \$40,000.00 of revenue of the competing carriers is obtained wholly within New England, but on the other hand there is no question but what the majority of Consolidated's revenues is obtained from operations to and from other territories than New England and that its New York State, Pennsylvania and New Jersey operations are entirely out of this area. Thus the Commission uses the same basis of comparison for both sets of figures.

On the other hand, in appellant McLean's brief (page 4) there is the statement that the combined revenues of McCarthy and Consolidated are three times greater than any single company which will be left in the New England area. They are making this comparison of McCarthy's and Consolidated's operations (including the operations just referred to outside of the area) with the operation of truck lines wholly within the area. Such distorted comparisons evidence nothing except an attempt to create prejudice. Equally distorted is the statement on pages 6 and 7 of the brief of the appellant Secretary of Agriculture that Associated will have operating revenues ten times greater than any other motor carrier in the area where it operates. Even to make such a statement technically correct one is required to read it as being a comparison only with other motor carriers having their entire operations in the area where Associated operates. Since United States Freight Lines, Interstate System, and the Keeshin System all have substantial operations in the area (but not exclusively therein), any comparison should be of their revenues of \$14,000,000, \$9,000,000 and \$7,000,000 respectively for 1940 with Associated's \$18,000,000 for the same period.

ness to the merger. Approval of the merger could neither change the shippers nor effect their markets. The major part of the business and competition of the M. Moran Transportation Lines, for example, was and must remain in New York State, and the major part of the business and competition of Transportation, Inc. was and must remain in Mississippi, Louisiana, and Alabama. While improvement in service and efficiency in operation may, and it is expected that they will, result in attracting business presently moved by competing forms of transportation, nevertheless this effect will be to enhance the competition with such rail lines, boat lines, and freight forwarders rather than to stifle competition in the trucking industry.<sup>34</sup> Indeed, it appears from the testimony and the Commission's Report that there are in the territory substantial truck lines, such as the Akers Company and Carolina Freight Haulers, who have operating rights and offer direct service from the deep south to as far north and east as New York State and northern Massachusetts, and that within the constituent companies of the merger there were no such operations. The appellant McLean, through this suit (which was his first appearance in the proceedings) and his presently applied-for operations, identifies himself prominently among such carriers. Approval of the merger, which permits through service by Associated, adds to rather than detracts from the competitive situation respecting freight movements between these points.<sup>35</sup>

<sup>34</sup> See testimony of witness Tupper (R. 896-897), and other shippers; also Applicant's Exhibit 18 (R. 1481); testimony of witness Mead (R. 1139, 1145-1146, 1165); Altwater (R. 857); and Lawson (R. 673).

<sup>35</sup> Comprehension of the conflicting motives, interests and arguments of opponents to the merger is enlightening.

The plaintiff appellant McLean appears to be grieved that a unified service from New England to the South, made possible by the merger, would result in competing with the "property rights" which he claims to have in such a service. Such rights are presently inchoate and can presumably only be es-

Compared with rail, water, air or even motor bus companies, Associated would be small. Gulliver was a giant

established if, contrary to appellant's major premise that truck service in the territory is presently adequate, McLean is able to demonstrate to the Interstate Commerce Commission in his Section 207 (new operation) application that the service of other companies is inadequate. (Case No. MC-31389, Sub. 11.

The farmers' interests, as expressed before the full Commission on oral argument by counsel for the Secretary of Agriculture (R. 438-440), was to guarantee truck competition against rail lines by insuring the independence of Associated Transport from rail affiliation ("\* \* \* if this is going to make for more efficient operation, it would be a more efficient competitor of rails \* \* \*"). We are here only because we are fearful that through the participation of this banking house there will be a destruction of this competition between rail and motor carrier." At the oral argument, W. S. Campfield, an admitted farm lobbyist, representing the intervening fruit growers' associations, assigned the reason for his opposition to the alleged banker interest and to the desire of the fruit growers to keep small truck lines, because equipment of small truck lines was more readily divertible from the regular highway uses to the orchards during picking seasons than was the equipment of large truck lines. He also stated that the railroads should be protected from the increased competition which he stated this merger would afford (R. 441-443).

Strangely enough, the Antitrust Division, although its expressed reasons for intervention was its abhorrence of testimony potentially colored by property interests (R. 504), aligns itself with these special interests and cites their intervention with approval and even produces under its aegis as its principal witness a representative of water carriers and shipbuilders (R. 1348). It intervened before the Interstate Commerce Commission in the appellant McLean's 207 application for new operations (*supra*) less than a week before McLean commenced this suit. Such intervention was presumably in connection with the charge that it made a few days before in its application to the Interstate Commerce Commission for the reopening of the Associated case to the effect that parties to the merger through concerted action were opposing applications before the Commission concerning operating authorities of small independent motor carriers. (McLean's gross annual business exceeds \$1,000,000 and for 1941 had profits amounting to more than double the combined profits of Transportation, Inc. and Southeastern Motor Lines, two of the southern companies in the merger.) The Division expressed itself as desirous of promoting the free-play of competition, but opposed this merger which will enhance truck competition to rail, boat lines, forwarding companies, and air express companies, as well as increasing New England to South truck competition.

to the Lilliputians but a dwarf to the Brobdingnagians.<sup>36</sup>

"The Commission's Report (R. 35) states:

"The large size of a motor carrier which would result from a unification alone does not constitute sufficient ground for denial of an application. Application of such a policy would tend to freeze the motor carrier industry at its present level. Such transportation, compared with rail and water transportation, is still in its infancy and arbitrary restrictions upon its natural development into larger units solely by reason of comparative size would not be in the public interest. There are many thousands of motor carriers of property subject to our jurisdiction. Many of these are very small, and small motor carriers are necessary and have a definite place in the industry. On the other hand it would seem that larger motor carrier systems, comparable in size and strength with units of competing forms of transportation, should also have their place in the industry."

The Commission apparently felt that in a well-rounded coordinated national transportation picture there should be motor truck companies capable of giving broad territorial coverage and bearing the relationship in size (considering the smaller size of the industry) that large rail systems bear to the smaller units of that much larger industry. Traffic witnesses testified to the need for a north-south system comparable to the large east-west systems in the motor truck business (R. 890-891). References to the operations of such east-west systems, as Inter-State, Keeshin, and the United States Freight Lines, are to be found in the testimony of Altwater (R. 843), Mead (R. 1134), Vayo, etc. (R. 887), and their operations were further before the Commission by virtue of the stipulations in R. 1197-1198 and 670-671 that the Commission or parties might refer to the annual reports of any and all carriers subject to their jurisdiction, as well as to its statistical publications, and by virtue of the stipulation on R. 1105-1106 that the motor carrier dockets of the Commission might be referred to as to operating authority of any carriers. The Commission also refers to such systems in its Report for the purpose of showing that such operations have not resulted in a monopoly or injury to smaller carriers (R. 33). In the same connection and in connection with the competition of rail and forwarding company owned or controlled truck lines, we invite attention to the following from the argument of Mr. Wiprud, representing the Department of Justice on the oral argument before the Commission, and presently representing the Secretary of Agriculture in this appeal:

"But I think that the basic reason for the impossibility of creating a competing system to the carrier here proposed lies largely in the present relationship of other carriers that have been left out of the merger, that is carriers that operate regionally. We find that many of these carriers are owned by railroads. Take, for instance, the New England Transportation Company; they are owned by the New Haven Railroad. The Buffalo Storage and Delivery Company is owned by the Pennsylvania Railroad. The C & B Transit Company is affiliated with several railroads. And then we find that the Seaboard Freight Lines, Inc.,

Even in the trucking industry Associated would not be appreciably larger in revenues than the United States Truck Lines System nor in territorial area larger than the Interstate System. The United States Truck Lines System had in excess of \$14,000,000 revenue in 1940, as compared with \$18,000,000 for Associated Transport's constituent companies. They were the largest truck system in the country in revenues prior to the Associated application. No evidence of the evil results of such sizable operations was produced, and the Commission in its Report indicates the absence of any such results. The record is devoid of any proof that size is inconsistent with the public interest.

The competitive situation as between the constituent companies prior to the merger was as follows:

Southeastern Transportation Lines, Inc. could serve only between points on routes west of Roanoke, Va. and points north and east thereof. As the Commission stated (R. 29), the competition between it and other companies in the merger was slight. The territory from which it drew its business was west of the others' operations (R. 253).

The main operations and business of Transportation, Inc. was south of Atlanta, Ga. It could be competitive with Horton only north of Atlanta, Ga. as far as Greensboro, N. C. and with Barnwell Brothers between Asheville and Greensboro, N. C. (R. 253).

The main routes of Horton and Barnwell were between New York and Philadelphia on the one hand and the Carolinas on the other, and over these routes they were

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supplies the eastern connection for the west-east operation of Keeshin Lines, being a duly owned subsidiary of that company. Liberty Forwarding and Distributing Company is affiliated with Acme Fast Freight (a Forwarding company) Motor Express and Niagara Motor Express are affiliated with the U. S. Freight Lines of Delaware, and so forth and so on." (R. 430.)

directly competitive. However, Horton was also concerned with serving the intermediary territory and had an important route to Pittsburgh from the Carolinas which, while it paralleled the Barnwell route to Winchester, Va. and Cumberland, Md., was restricted to through Pittsburgh traffic (R. 1380). No company in the merger other than Horton served the Pittsburgh territory. Likewise, Barnwell's operations did not extend south of Charlotte, while Horton had extensive operations as far as Atlanta and Rome, Ga. Barnwell on the other hand served many points not served by Horton or any of the other carriers, including the entire eastern shore of Maryland (R. 30 and 253).

In the north, the McCarthy Freight System and Consolidated Motor Lines, Inc. paralleled to a great extent each other's routes in Massachusetts, Rhode Island and Connecticut (R. 253), but the greater portion of the business of Consolidated Motor Lines flowed between the New England States on the one hand and New York, New Jersey and Pennsylvania on the other. McCarthy's rights were local to the above named states and it was principally a short-haul New England carrier. A major portion of its traffic was in eastern Massachusetts, where Consolidated Motor Lines was weak, whereas in lower Connecticut and western Massachusetts Consolidated was strong and McCarthy Freight System was weak (R. 23).

In the case of Moran, only twenty-five per cent of its over 7,000 miles of routes were paralleled by Consolidated, who was the only one of the merged carriers operating in this territory (R. 253). Almost half of Moran's business was intrastate commerce in New York and Western Pennsylvania (R. 848).

It is thus readily apparent that because Consolidated in transporting a shipment for one of its accounts from Buf-

falo, N. Y. to Hartford, Conn. by way of Albany, although running over several hundred miles of highway on which Moran had operating rights as far as Albany and over New England highways on which McCarthy had rights from the vicinity of Albany to Hartford, was not in competition in through service with Moran or McCarthy even though extensive duplications of highway routes existed. Likewise, Consolidated in moving a shipment from Boston, Mass. to Philadelphia, Pa. traversed highways through New England on which McCarthy also had operating rights almost as far as New York City, and from New York City to Philadelphia traversed highways on which Norton, Barnwell and Southeastern were certificated, and yet the freight being transported was freight which only Consolidated could haul since none of these carriers other than it accepted shipments of such a movement or could offer such a service.

In the compilation of the total highway miles of Associated's constituent companies and the duplicated miles to be eliminated after merging, such considerations were given no weight. The figures of mileage to which we have just referred were supplied for the record as an unexplained statistical exhibit (R. 1501) after the conclusion of the hearing and as a result of a last minute request of the Justice Department. As the Commission found, the extent of elimination of competition cannot be measured by an appearance of approximately one-third overlapping in the highway mileage of operating rights (R. 22).

The Commission stated that the proposed unification was predominantly an end-to-end consolidation of complementary operations and that to the extent that there is overlapping, the consolidation will result in elimination of duplications with economies and release and better use of

equipment and terminal space (R. 44). Appellants criticise this statement, but as we have just seen it is in accordance with the facts. In this connection they refer to a remark of Commissioner Splawn in his dissenting opinion<sup>36A</sup> respecting the overlapping of mileage and attempt to give basis for their criticism by dealing solely with highway routes and disregarding the restrictions in operating authorities, the character of the traffic handled, and the origin and destination of such traffic.

The description of operations as "complementary" connotes much more than the relationship of the routes of one company to another. It has to do with the type of company and the character of its operations. This was illustrated in the testimony of the witness Horton who was one of several to discuss this subject. Horton testified (R. 513, 522, 523, 524) in substance that the companies were selected because their geographical location enabled them to deal with the natural flow of freight up and down the Atlantic Seaboard but that in addition to geographical location they were selected because of type of company—short-haul (McCarthy), "peddler" operations (Moran), middle-haul operations (Consolidated), and long-haul

<sup>36A</sup> In the *Transport case* (*supra*) the Commission used language similar to Commissioner Splawn's in this case where he refers to projected economies. This language was commented upon in the *Yale Law Journal*, Vol. 50, page 1378, June 1941. After characterizing the conclusion contained in the language was "cavalier", this leading article continued:

"Strictly interpreted and carefully observed, this dogmatism would bar unification upon a scale more extensive than those now being successfully operated. Skepticism of optimistic estimates of economies is understandable, especially since expansions by Keeshin Transcontinental Freight Lines had portended similar savings which failed to materialize. But to substitute for articulate analysis a rule of thumb which, if consistently applied, would freeze motor carrier operation at its present level is hardly understandable."

operations (Horton, Barnwell, Southeastern and Transportation).<sup>37</sup>

Referring to duplication of highway distance of 13,546 miles<sup>38</sup>, we find (R. 1501) that the mileage of Consolidated was 8,229 miles and of Horton was 4,854 miles, or a total of 13,083 miles or a distance for these two companies approximately equal to the total amount of overlapping. Concededly substantially no competition existed between Arrow, Barnwell, McCarthy, Moran, Southeastern and Transportation. Under the circumstances, since the operation of six of the eight companies were indisputably end-to-end (as well as non-competitive) operations, any statement that the merger was *predominantly* end-to-end is amply supported by the facts. The same conclusion is inescapable if we apply the test of revenue.

Of course, as we have seen from an examination of the operations of the respective companies, a large proportion of the Consolidated operations are in competition with no other company in the merger, and this is true as well of a substantial part of Horton's operations.

The necessity for the inclusion of Consolidated and Horton in the merger should be obvious to everyone, as it was to the Commission. Without Consolidated there would have been no connection between New England and the South since the operations of McCarthy did not reach out of New England and the operations of the other companies did not

<sup>37</sup> Commissioner Splawn recognizes differences in character of operations when he refers to the special contract service with armored vehicles performed by McCarthy. The record shows that this operation was insignificant, that it dealt solely with precious metals, and that Associated had no particular desire to continue it but simply left it to the Commission as to whether the public interest required that it should be continued. The Commission reserved the question of its continuance to a future date when in its normal procedure it would pass on the Grandfather rights of the former McCarthy Company (R. 20).

<sup>38</sup> In these calculations we have included Arrow because their mileage is included in the exhibit and because the Commission's Report was written with them included. Removal of Arrow makes little difference to these figures.

reach into New England. Without Horton much of the southern territory would not have been covered and one could hardly have expected the Commission to approve a merger when without Horton the southern operations would have lacked backbone and approximated an operating deficit. The Consolidated and Horton Companies had the "know how" of inter-territorial operations, the most substantial part of the financial resources, the most complete organizations, and the only constructive maintenance and safety programs.

The record is barren of any substantial opposition testimony in contradiction of the applicant's proof. Four intervening truckmen who testified in the proceeding all claimed that they were not protesting the application, and the net of their testimony was helpful to applicant, some of it being cited in the Commission's Report in support of its findings<sup>39</sup>. The only protestants were the Antitrust Division of the Department of Justice and Super Service Motor Freight Co., a motor carrier competing principally with Southeastern in the Nashville-Knoxville territory and

<sup>39</sup> J. B. Dempsey of the Mason-Dixon Lines, a carrier, in gross revenue the same size as Barnwell Bros., testified in substance that his service and coverage was better than that of the other southern carriers in the merger; that the territory they serve is more extensive than that involved in the merger (R. 1220), that his company was growing rapidly and he had nothing to fear as to his ability to get along in competition with the merged companies if approved, but that he did feel some concern that he might not receive as much interchange freight as formerly. In support of this contention certain figures on interchange with Consolidated were given by the witness (R. 1208). We submit that if they prove anything it is that Mason-Dixon is systematically diverting its interchange from Consolidated to other carriers, while at the same time the monthly tonnage turned over to Mason-Dixon has been practically uniform. It is presumably this testimony of Dempsey that is the basis for the contention in appellants' briefs that independent motor carriers sought to voice their concern over the adverse effect of the merger on their business, particularly with respect to interchange traffic, and which they say graphically demonstrates that their motion to require all competing carriers in the territory to furnish figures of their interchange freight should have been granted. Examination of these figures upholds the Commission's denial of the motion. Figures of interchange as desired by the Antitrust Division were submitted (Exhibit 28, R. 1503) by Mason-Dixon. Contrary to Dempsey's testimony that Consolidated treated them unfairly, these figures

whose protest was directed solely to Southeastern and concerned issues extraneous to the proceeding Commission Report, R. 43, 44). They gave no testimony.

disclosed that at New York City Mason-Dixon, during a seven months' period, turned over to carriers not in the merger 14,858,812 pounds of freight and received from such carriers only 4,841,181 pounds, while during the same period they turned over to Consolidated only 459,358 pounds as against 1,274,126 pounds they received from Consolidated (R. 1208). Obviously, in spite of the claims of appellants that independent carriers would be forced to interchange with Associate to get adequate territorial coverage in New England, it appears that Mason-Dixon gave Consolidated less than twenty-five truckloads of freight in seven months, and this apparently only to make a showing of reciprocity for what they received. Dempsey further felt that possibly the combination of these companies would not give him a fair division of rates on interchange. (Apparently he, as did others, overlooked provisions of Section 216, subdivision (F), of the Motor Carrier Act which provides that the Commission may fix divisions as between interchange carriers.) The Examiner, as the judge of the facts, had the advantage of observing Dempsey's appearance and demeanor on the witness stand. For whatever reason of temporary disability or otherwise, he was unable to state within two million dollars the annual gross revenues of the company of which he was manager (R. 1219).

John M. Akers—General Manager of Akers Motor Lines, a million dollar company, testified that his company and several others which he named, none of whom are included in this merger, offer direct service to Southern points, to New England and to New York points; that he had practically no interchange with companies in the proposed unification, and that the granting of the application would effect his operations favorably, because he would have a lesser number of solicitors to contend with than if the companies were operated individually, and that he might expect shippers, now using Horton and Barnwell to divert a certain amount of their freight to his and other competing lines if these companies were put together (R. 1266-1282).

C. H. Smith—President of Smith Transfer, of North Carolina, a substantial carrier solely in the southern territory, stated that he was not protesting the application, but that he had appeared solely to bring to the attention of the Commission that he was fearful he might lose some freight which he presently enjoyed through a connection with Horton, plus a lesser amount which he received from the others. He operates 63 units and testified that if he lost all his interchange business with these carriers it would only effect his lines to the extent of two or three units, and that it would have no effect on his ability to render service to the public. He presently interchanges with Mason-Dixon and of course would interchange with the various other lines running through to northern territory (R. 1242-1251).

W. Lewis of Lewis-Holmes Motor Freight Corporation, a southern carrier operating only in that territory, informed the Commission that he had no interchange with Horton and substantially none with Barnwell, that he was not against the application, that his principal volume of business to northern points was carried on with Motor Transit Co., Mason-Dixon, Brooks & Mundy; that Brooks' service is very satisfactory and they are a good carrier all the way to Philadelphia, New York and Jersey points (R. 1251-1265).

The avowed purpose of the intervention of the Anti-trust Division in this proceeding, as set forth in their letter under date of August 15th, 1941, addressed to Chairman Eastman, of the Commission (R. 504), is as follows: "The reason for my request is that jurisdiction to determine whether unification of carriers unduly restrains competition has been given to the Interstate Commerce Commission. The Anti-trust Division is the only government agency in a position to present evidence on the monopoly question from a point of view of the public interest. Evidence presented by private parties necessarily must be colored by their own property interests in the controversy. Therefore, we feel that it is part of our duty to complete the record before the Commission with such evidence as we have discovered in our investigation of transportation monopolies." Presumably the Commission accepted this communication at its face and, in good faith, thereafter issued an order permitting the intervention of the Division.

Significantly, however, at no time during the hearing did the Division endeavor in any manner to produce testimony respecting any investigation which they had made in the past of alleged transportation monopolies.

F. E. Berquist, an employee of the Antitrust Division, who admitted he had no experience or knowledge of the business of transporting freight by motor truck, attempted, as a statistician, to present his interpretations or conclusions from certain data contained in the annual financial reports of motor carriers to the Interstate Commerce Commission. His testimony was necessarily stultified by a total lack of trucking experience and the natural limits of the sources from which he chose to obtain his information, since these annual reports are not designed fully to describe the territory, service and operating rights of the carriers, neither do they nor are they intended to indicate

the proportion of total tonnage or revenue derived from any part of any route<sup>39A</sup>. (A less charitable interpretation could be placed on his "conclusions" and on that portion of his testimony in which he attempted to show the limits of the territory and service of other than Class 1 carriers.) So far as data, obtained under these circumstances, could have any probative value, it confirmed the testimony on the same subject offered by applicant whose exhibits and testimony were based on actual knowledge by the witnesses and the Commission's dockets showing the operating authority of competitors. (R. 1286-1348.)

Theodore Brent, the other witness of the Antitrust Division, while admitting that a merger would probably result in an improved transportation service, felt that the same result could be accomplished over a long period of time, solely through the interchange of equipment between large numbers of the presently existing carriers. He agreed with the applicant that the present practical difficulties of such a plan were great, but asserted that the day might come when substantially complete standardization of equipment and improved financial situation of truckmen would make this possible. He did not explain by what means the necessary standardization of equipment or improvement in financial position could be brought about, but seemed to deem it sufficient that railroads, after more than half a century and the expenditures of hundreds of millions of dollars, had achieved standardization of equipment enabling free interchange. Mr. Brent stated in effect that trucks cannot and do not successfully compete with water transportation and that rails do not and cannot success-

<sup>39A</sup> Either Berquist's ignorance of the transportation business or his "prejudice" was so complete as to render his so-called "studies" ridiculous. For example, he testified that Cannon Mills, probably the largest cotton mills in the world, made tobacco products and classified the truckmen serving them as "tobacco haulers" (R. 1292).

fully compete with trucks. In this connection it may be noted that the Commission in the *Transport Case, supra*, apparently took a different view of the extent, severity and danger to truck lines of rail competition in the territory here involved when it wrote in that case "there is even less justification for the issue of securities by the motor carrier industry on the basis of past earnings, as the position of the motor carrier industry in the transportation field is not yet fully developed. This is particularly true in connection with motor carrier service such as is here contemplated, much of which would be competitive with rail and water service and the earnings from which might be adversely effected by any change in the rates of competing forms of transportation."

In any event little importance can be attached to the testimony of this witness. The record discloses that he prepared and wrote out his testimony in final form, having before him only the preliminary testimony of the applicant, and that he was neither present at the hearings nor had he read or discussed any of the testimony or exhibits offered during the last half of the hearing. Brent's knowledge of the merger was so confused that he stated (R. 1350), "An examination of the contentions of applicant and the testimony of traffic witnesses demonstrates that the lines to be merged concern themselves only with long-haul traffic between New York and New England on the one hand and points in Virginia, Tennessee, the Carolinas and Georgia in the south on the other." Later, in contradiction of Berquist's testimony, he named twenty-nine motor carriers competing with Horton, Barnwell and Southeastern between the Carolinas and Tennessee and the metropolitan district of New York and Philadelphia (R. 1357).

It is indeed an anomaly that the Antitrust Division, having expressed themselves in their petition for inter-

vention as fearful of testimony potentially colored by property interests, should have produced the witness Brent, a paid employee of water carriers and dockbuilders, who from his demeanor, testimony and admissions might well be characterized as a lobbyist for water transportation interests. Certainly his testimony and attitude disclosed his obvious fear that the proposed merger, by reason of its territorial scope, could offer competition to water transportation, which he stated, in effect, enjoyed a virtual monopoly of the traffic between the Middle Atlantic States and Gulf ports (R. 1348-1367).

Touching the allegations of error in the Commission's denial of the Antitrust Division's petition for reopening and rehearing and argument and reconsideration of its decision in the Associated case, we direct the attention of the Court to the reply of Associated Transport, Inc. in the record of these proceedings (R. 486). It will be observed that the charges in the said petition continued to the effect that Associated had or could variously conspire with labor unions, traffic bureaus and itself equally to injure other truckmen and obtain a monopoly of highway transportation and refers to matters peculiarly pertinent to the proper sphere of the activities of the Antitrust Division of the Department of Justice. If Associated Transport, or its constituent companies, was or had been engaged in such activities, they were all matters either punishable or preventable under the Antitrust Laws, and it would seem that the Division could afford useful cooperation to the Interstate Commerce Commission in restraining such violations, if they existed. On the other hand, if the allegations were in the nature of "prophesies", and since any fear of their fulfillment would involve an assumption of the failure of the Antitrust Division to carry out its plain duty, in the future, there would seem no reason for the Commission to reach a conclusion other than it did.

## Conclusion.

It should be recognized that the Antitrust Division having decided, for whatever reasons of its own, to usurp the regulation of transportation facilities, and having elected this case as a beach-head for its infiltration into the regulatory processes, then regardless of the evidence or the merits of the application, it was bound, for reasons of tactics and expediency, to assume and contend by every means in its command that the application was monopolistic and inimical to the public interest.

We here state that our comment and criticism of the attitude of the Division is not intended as a personal reflection on any of its personnel, for whom individually we have the highest regard, but is directed rather at their group attitude or philosophy, which has been well characterized by Max Lerner<sup>10</sup> as the "corrosive detachment" school of economics. Whatever the justification for such philosophy and tactics on the part of governmental agencies in attempting to police and restrain unfettered and rampant free enterprise, we submit it has no place for its application in an industry now well regulated and properly dominated by the extensive and adequate provisions of the Interstate Commerce Acts and an experienced, competent and honorable Commission.

The Commission has rendered its considered judgment of the merits of this application and its administrative determination in carrying out the regulatory processes under and by virtue of the statutory guidance and its decision should be clothed with a high degree of finality. Judicial review of the legitimate exercise of discretion would relegate the method of administrative control to a subordinate status and would defeat the very purposes for which

<sup>10</sup>*Ideas Are Weapons*, Viking Press, 1939.

the Commission's vast grants of flexible authority were conferred<sup>11</sup>.

The courts have long been self-denying in allowing dominance of the Commission in its appropriate sphere in accordance with the general legislative purpose of establishing administrative control<sup>12</sup>. "If the order made by the Commission does not countervene any constitutional limitation, and is within the constitutional and statutory authority of that body, and not unsupported by testimony, it cannot be set aside by the courts, as it is only the exercise of an authority which the law vests in the Commission."<sup>13</sup>

It is respectfully submitted to the attention of the Court that considered in the light of the plain facts of this case and the total lack of connection between the opponent's arguments and the law which the Commission is charged with administering, there seems to be no escape from the conclusion that the Antitrust Division, pursuing the concept peculiar to its economic and political philosophy, seeks, through the intervention herein, by extra-legislative process to nullify the Motor Carrier Regulatory Acts and to

<sup>11</sup> Sharfman, *The Interstate Commerce Commission*, Part II, page 384.

<sup>12</sup> Reference is made to the *Federal Trade Commission*, by Jerald C. Henderson (1924), pages 97-98.

"In the case of the Interstate Commerce Commission, the Supreme Court itself, with but slight aid from the text of the law, has created in a notable series of cases, a category of 'administrative questions', upon which it will refuse to substitute its judgment for the judgment of the Commission, and into which indeed courts may not inquire until the Commission has made its rulings. These cases do not rest upon any supposed distinction between questions of fact and law; generally they are neither, but merely judgments of a practical character. They do not rest upon any statutory limits on the right of review. They rest on a statesmanlike comprehension of the purpose and function of administrative enforcement and of the importance of expert decision upon questions of great economic importance."

Also, *The Interstate Commerce Commission vs. Illinois Central R. R.* 215 U. S. 452 (1910); *Proctor & Gamble Co. vs. United States*, 225 U. S. 282 (1912).

<sup>13</sup> *Pennsylvania Co. vs. United States*, 236 U. S. 351, 361 (1915).

negative the powers of the Motor Carrier Regulatory Body for the dual purpose of imposing their concept of a "free market" in transportation and transferring the policing of the Industry to the Division's group of economic and legal technicians who, to paraphrase Mr. Thurman Arnold's book, would then become the Bottleneck of the Trucking Industry.

Accordingly it is prayed that this appeal be dismissed.

Respectfully submitted:

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*Attorney for Appellees,*

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Dated: October 1943.

## APPENDIX.

### NATIONAL TRANSPORTATION POLICY (54 STAT. 899).

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

### AN ACT TO REGULATE COMMERCE, FEBRUARY 4, 1887

(24 STAT. 379, 380).

SEC. 5.—That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any contract, agreement or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

## TRANSPORTATION ACT OF 1920 (41 STAT. 456, 480).

SEC. 407. The first paragraph of section 5 of the Interstate Commerce Act is hereby amended to read as follows:

“SEC. 5. (1) That, except upon specific approval by order of the Commission as in this section provided, and except as provided in paragraph (16) of section 1 of this Act, it shall be unlawful for any common carrier subject to this Act to enter into any contract agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid each day of its continuance shall be deemed a separate offense: *Provided*, That whenever the Commission is of opinion, after hearing upon application of any carrier or carriers engaged in the transportation of passengers or property subject to this Act, or upon its own initiative, that the division of their traffic or earnings, to the extent indicated by the Commission, will be in the interest of better service to the public, or economy in operation, and will not unduly restrain competition, the Commission shall have authority by order to approve and authorize, if assented to by all the carriers involved, such division of traffic or earnings, under such rules and regulations, and for such consideration as between such carriers and upon such terms and conditions, as shall be found by the Commission to be just and reasonable in the premises.

“(2) Whenever the Commission is of opinion, after hearing upon application of any carrier or carriers engaged in the transportation of passengers or property subject to this Act, that the acquisition, to the extent indicated by the Commission, by one of such carriers of the control of any

other such carrier or carriers either under a lease or by the purchase of stock or in any other manner not involving the consolidation of such carriers into a single system for ownership and operation, will be in the public interest, the Commission shall have authority by order to approve and authorize such acquisition under such rules and regulations and for such consideration and on such terms and conditions as shall be found by the Commission to be just and reasonable in the premises.

"(3) The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraph (1) or (2), as it may deem necessary or appropriate.

"(4) The Commission shall as soon as practicable prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems. In the division of such railways into such systems under such plan, competition shall be preserved as fully as possible and wherever practicable the existing routes and channels of trade and commerce shall be maintained. Subject to the foregoing requirements, the several systems shall be so arranged that the cost of transportation as between competitive systems and as related to the values of the properties through which the service is rendered shall be the same, so far as practicable, so that these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties.

"(5) When the Commission has agreed upon a tentative plan, it shall give the same due publicity and upon reasonable notice, including notice to the Governor of each State, shall hear all persons who may file or present objections thereto. The Commission is authorized to prescribe

a procedure for such hearings and to fix a time for bringing them to a close. After the hearings are at an end, the Commission shall adopt a plan for such consolidation and publish the same; but it may at any time thereafter, upon its own motion or upon application, reopen the subject for such changes or modifications as in its judgment will promote the public interest. The consolidations herein provided for shall be in harmony with such plan.

“(6) It shall be lawful for two or more carriers by railroad, subject to this Act, to consolidate their properties or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership, management, and operation, under the following conditions:

“(a) The proposed consolidation must be in harmony with and in furtherance of the complete plan of consolidation mentioned in paragraph (5) and must be approved by the Commission:

“(b) The bonds at par of the corporation which is to become the owner of the consolidated properties, together with the outstanding capital stock at par of such corporation, shall not exceed the value of the consolidated properties as determined by the Commission. The value of the properties sought to be consolidated shall be ascertained by the Commission under section 19a of this Act, and it shall be the duty of the Commission to proceed immediately to the ascertainment of such value for the properties involved in a proposed consolidation upon the filing of the application for such consolidation.

“(c) Whenever two or more carriers propose a consolidation under this section, they shall present their application therefor to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties sought to be consolidated is situ-

ated and the carriers involved in the proposed consolidation, of the time and place for a public hearing. If after such hearing the Commission finds that the public interest will be promoted by the consolidation and that the conditions of this section have been or will be fulfilled, it may enter an order approving and authorizing such consolidation, with such modifications and upon such terms and conditions as it may prescribe, and thereupon such consolidation may be effected, in accordance with such order, if all the carriers involved assent thereto, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

“(7) The power and authority of the Commission to approve and authorize the consolidation of two or more carriers shall extend and apply to the consolidation of four express companies into the American Railway Express Company, a Delaware corporation, if application for such approval and authority is made to the Commission within thirty days after the passage of this amendatory Act; and pending the decision of the Commission such consolidation shall not be dissolved.

“(8) The carriers affected by any order made under the foregoing provisions of this section and any corporation organized to effect a consolidation approved and authorized in such order shall be, and they are hereby, relieved from the operation of the ‘antitrust laws,’ as designated in section 1 of the Act entitled ‘An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,’ approved October 15, 1914, and of all other restraints or prohibitions by law, State or Federal, insofar as may be necessary to enable them to do anything authorized or required by any order made under and pursuant to the foregoing provisions of this section.”

SEC. 408. The paragraph of section 5 of the Interstate Commerce Act, added to such section by section 11 of the Act entitled "An Act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912, is hereby amended by inserting "(9)" at the beginning thereof.

The two paragraphs of section 11 of such Act of August 24, 1912, which followed the paragraph added by such section to section 5 of the Interstate Commerce Act, are hereby made a part of section 5 of the Interstate Commerce Act. The first paragraph so made a part of section 5 of the Interstate Commerce Act is hereby amended by inserting "(10)" at the beginning thereof, and the second such paragraph is hereby amended by inserting "(11)" at the beginning thereof.

AN ACT TO AMEND SECTION 407 OF THE TRANSPORTATION ACT OF 1920, ENACTED JUNE 10, 1921 (42 STAT. 27).

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,* That Section 407 of the Transportation Act of 1920 be, and it is hereby, amended by adding thereto a new paragraph designated as paragraph 9 as follows:

"(9) Upon the application of one or more telephone companies for authority to consolidate their properties or a part thereof into a single company, or for authority for one or more such companies to acquire the whole or any part of the property of another telephone company or other telephone companies or the control thereof by the purchase of securities or by lease or in any other like manner, when such consolidated company would be subject to this Act, the Commission shall fix a time and place for a public hearing upon such application and shall thereupon give reasonable

notice in writing to the Governor of each of the States in which the physical property affected, or any part thereof, is situated, and to the State Public Service Commission or other regulatory body, if any, having jurisdiction over telephone companies, and to such other persons as it may deem advisable. After such public hearing, if the Commission finds that the proposed consolidation, acquisition, or control will be of advantage to the persons to whom service is to be rendered and in the public interest, it shall certify to that effect; and thereupon any act or acts of Congress making the proposed transaction unlawful shall not apply. Nothing in this paragraph contained shall be construed as in any wise limiting or restricting the powers of the several States as now existing to control and regulate telephone companies."

EMERGENCY RAILROAD TRANSPORTATION ACT OF 1933  
(48 STAT. 211, 217).

SECTION 201. Section 5 of the Interstate Commerce Act, as amended (U. S. C., title 49, sec. 5), is amended by striking out paragraphs (2) and (3) and by renumbering paragraphs (4) and (5) as paragraphs (2) and (3), respectively, and by striking out the last sentence of the paragraph so renumbered as paragraph (3):

SEC. 202. Such section 5 is further amended by striking out paragraphs (6), (7), and (8), and by inserting in lieu thereof the following paragraphs:

"(4) (a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b), for two or more carriers to consolidate or merge their properties, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract

to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through purchase of its stock; or for a corporation which is not a carrier to acquire control of two or more carriers through ownership of their stock; or for a corporation which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock.

“(b) Whenever a consolidation, merger, purchase, lease, operating contract, or acquisition of control is proposed under subdivision (a), the carrier or carriers or corporation seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants, of the time and place for a public hearing. If after such hearing the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed consolidation, merger, purchase, lease, operating contract, or acquisition of control will be in harmony with and in furtherance of the plan for the consolidation of railway properties established pursuant to paragraph (3), and will promote the public interest, it may enter an order approving and authorizing such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon the terms and conditions and with the modifications so found to be just and reasonable.

“(5) Whenever a corporation which is not a carrier is authorized, by an order entered under paragraph (4), to acquire control of any carrier or of two or more carriers, such corporation thereafter shall, to the extent provided by the Commission, for the purposes of paragraphs (1) to

(10), inclusive, of section 20 (relating to reports, accounts, and so forth, of carriers), including the penalties applicable in the case of violations of such paragraphs, be considered as a common carrier subject to the provisions of this Act, and for the purposes of paragraphs (2) to (11), inclusive, of section 20a (relating to issues of securities and assumptions of liability of carriers), including the penalties applicable in the case of violations of such paragraphs, be considered as a "carrier" as such term is defined in paragraph (1) of such section, and be treated as such by the Commission in the administration of the paragraphs specified. In the application of such provisions of section 20a in the case of any such corporation, the Commission shall authorize the issue or assumption applied for only if it finds that such issue or assumption is consistent with the proper performance by each carrier which is under the control of such corporation of its service to the public as a common carrier, will not impair the ability of any such carrier to perform such service, and is otherwise compatible with the public interest.

"(6) It shall be unlawful for any persons, except as provided in paragraph (4), to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more carriers, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or management accomplished or effectuated after the enactment of this amendatory paragraph and in violation of its provisions. As used in this paragraph and paragraph (7), the words 'control or management' shall be construed to include the power to exercise control or management.

“(7) For the purposes of paragraphs (6) and (11), but not in anywise limiting the application thereof, any transaction shall be deemed to accomplish or effectuate the control or management in a common interest of two carriers—

“(a) If such transaction is by a carrier, and if the effect of such transaction is to place such carrier and persons affiliated with it, taken together, in control of another carrier.

“(b) If such transaction is by a person affiliated with a carrier, and if the effect of such transaction is to place such carrier and persons affiliated with it, taken together, in control of another carrier.

“(c) If such transaction is by two or more persons acting together, one of whom is a carrier or is affiliated with a carrier, and if the effect of such transaction is to place such persons and carriers and persons affiliated with any one of them and persons affiliated with any such affiliated carrier, taken together, in control of another carrier.

“(8) For the purposes of paragraph (7) a person shall be held to be affiliated with a carrier if, by reason of the relationship of such person to such carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or any other direct or indirect means), it is reasonable to believe that the affairs of any carrier of which control may be acquired by such person will be managed in the interest of such other carrier.

“(9) For the purposes of paragraphs (6), (7), (8), and (11), wherever reference is made to control it is immaterial whether such control is direct or indirect. As used in this paragraph and paragraphs (7), (8), and (11) the term ‘control’ shall be construed to include the power to exercise control.

“(10) The Commission is hereby authorized, upon complaint or upon its own initiative without complaint, but after notice and hearing, to investigate and determine whether any person is violating the provisions of paragraph (6). If the Commission finds after such investigation that such person is violating the provisions of such paragraph, it shall by order require such person to take such action as may be necessary, in the opinion of the Commission, to prevent continuance of such violation.

“(11) For the proper protection and in furtherance of the plan for the consolidation of railway properties established pursuant to paragraph (3) and the regulation of interstate commerce in accordance therewith, the Commission is hereby authorized, upon complaint or upon its own initiative without complaint, but after notice and hearing, to investigate and determine whether the holding by any person of stock or other share capital of any carrier (unless acquired with the approval of the Commission) has the effect (a) of subjecting such carrier to the control of another carrier or to common control with another carrier, and (b) of preventing or hindering the carrying out of any part of such plan or of impairing the independence, one of another, of the systems provided for in such plan. If the Commission finds after such investigation that such holding has the effects described, it shall by order provide for restricting the exercise of the voting power of such person with respect to such stock or other share capital (by requiring the deposit thereof with a trustee, or by other appropriate means) to the extent necessary to prevent such holding from continuing to have such effects.

“(12) If in the course of any proceeding under this section before the Commission, or of any proceeding before a court in enforcement of an order entered by the Commission under this section, it appears that since the beginning of such proceeding the plan for consolidation has been re-

opened under paragraph (3) for changes or modifications with respect to the allocation of the properties of any carrier involved in such proceeding, then such proceeding may be suspended.

"(13) The district courts of the United States shall have jurisdiction upon the application of the Commission, alleging a violation of any of the provisions of this section or disobedience of any order issued by the Commission thereunder by any person, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain such person from violation of such provision or to compel obedience to such order.

"(14) The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraph (1), (4), (10), or (11), as it may deem necessary or appropriate.

"(15) The carriers and any corporation affected by any order made under the foregoing provisions of this section shall be, and they are hereby, relieved from the operation of the antitrust laws as designated in section 1 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, and of all other restraints or prohibitions by or imposed under authority of law, State or Federal, insofar as may be necessary to enable them to do anything authorized or required by such order.

"(16) If any provision of the foregoing paragraphs of this section, or the application thereof to any person or circumstances, is held invalid, the other provisions of such paragraphs, and the application of such provision to any other person or circumstances, shall not be affected thereby.

"(17) As used in paragraphs (4) to (16), inclusive, the term 'person' includes an individual, partnership, association, joint-stock company, or corporation, and the term 'carrier' means a carrier by railroad subject to this Act."

SEC. 203. Such section 5 is further amended by renumbering as paragraph (18) the paragraph added by the Act entitled "An Act to amend section 407 of the Transportation Act of 1920," approved June 10, 1921, and by renumbering the remaining three paragraphs as paragraphs (19), (20), and (21), respectively.

SEC. 204. The provisions of the Interstate Commerce Act, as amended, and of all other applicable Federal statutes, as in force prior to the enactment of this title, shall remain in force, as though this title had not been enacted, with respect to the acquisition by any carrier, prior to the enactment of this title, of the control of any other carrier or carriers.

## MOTOR CARRIER ACT OF 1935 (49 STAT. 543, 555)

### CONSOLIDATION, MERGER, AND ACQUISITION OF CONTROL

SEC. 213. (a) It shall be lawful, under the conditions specified below, but under no other conditions, for two or more motor carriers which are not also carriers by railroad to consolidate or merge their properties, or any part thereof, into one corporation for the ownership, management, and or operation of the properties theretofore in separate ownership; or for any such motor carrier or two or more such carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another such carrier; or for any such motor carrier or two or more such carriers jointly, to acquire control of another such carrier through purchase of its stock; or for a person which is not a motor carrier or a carrier by railroad, or express, or water to acquire control of two or more motor carriers through ownership of their stock; or for any such person which has control of one or more motor carriers to acquire control of another such carrier through ownership of its stock; or for a carrier by railroad, ex-

press, or water to consolidate, or merge with, or acquire control of, any motor carrier or to purchase, lease, or contract to operate its properties, or any part thereof.

(1). Whenever a consolidation, merger, purchase, lease, operating contract, or acquisition of control is proposed under this section, the carrier or carriers or the person seeking authority therefore shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties or operations of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants, and other parties known to have a substantial interest in the proceeding of the time and place for a public hearing. If after such hearing the Commission finds that the transaction proposed will be consistent with the public interest and that the conditions of this section have been or will be fulfilled, it may enter an order approving and authorizing such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe: *Provided, however,* That if a carrier other than a motor carrier is an applicant, or any person which is controlled by such a carrier other than a motor carrier or affiliated therewith within the meaning of section 5 (8) of part I, the Commission shall not enter such an order unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than a motor carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

(2) Whenever a person which is not a motor carrier is authorized, by an order entered under subparagraph (1) of this section, to acquire control of any such carrier or of two or more such carriers, such person thereafter shall, to

the extent provided by the Commission, for the purposes of section 204 (a) (1), and section 220 (a) and (b), relating to accounts, records, and reports, and to the inspection of facilities and records, including the penalties applicable in the case of violations thereof, be subject to the provisions of this part.

(b) (1) "It shall be unlawful for any person, except as provided in paragraph (a), to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more motor carriers which are not also carriers by railroad, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or management accomplished or effectuated after the enactment of this part and in violation of this paragraph. As used in this paragraph, the words "control or management" shall be construed to include the power to exercise control or management.

(2) The Commission is hereby authorized, upon complaint or upon its own initiative without complaint, but after notice and hearing, to investigate and determine whether any person is violating the provisions of paragraph (b) (1) of this section. If the Commission finds after such investigation that such person is violating the provisions of such paragraph, it shall by order require such person to take such action consistent with the provisions of this part as may be necessary, in the opinion of the Commission, to prevent further violation of such provisions.

(3) For the purposes of this section, wherever reference is made to control, it is immaterial whether such control is direct or indirect.

(c) The district courts of the United States shall have jurisdiction upon the application of the Commission, alleging a violation of any of the provisions of this section or disobedience of any order issued by the Commission thereunder by any person, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain such person from violation of such provision or to compel obedience to such order.

(d) The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraphs (a) or (b), as it ~~may~~ deem necessary or appropriate.

(e) Except where a carrier other than a motor carrier is an applicant or any person which is controlled by such a carrier or carriers by railroad or affiliated therewith within the meaning of section 5 (8) of part I, the provisions of this section requiring authority from the Commission for consolidation, merger, purchase, lease, operating contract, or acquisition of control shall not apply where the total number of motor vehicles involved is not more than twenty.

(f) The carriers and any person affected by any order made under the foregoing provisions of this section shall be, and they are hereby, relieved from the operation of the "antitrust laws," as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and of all other restraints or prohibitions by or imposed under authority of law, State or Federal, insofar as may be necessary to enable them to do anything authorized or required by such order.

# TRANSPORTATION ACT OF 1940 (54 STAT. 898, 905)

## POOLING; UNIFICATIONS, MERGERS, AND ACQUISITIONS OF CONTROL

SEC. 7. Section 5 of the Interstate Commerce Act, as amended, is amended to read as follows:

“SEC. 5. (1) Except upon specific approval by order of the Commission as in this section provided, and except as provided in paragraph (16) of section 1 of this part, it shall be unlawful for any common carrier subject to this part, part II, or part III to enter into any contract, agreement, or combination with any other such common carrier or carriers for the pooling or division of traffic, or of service, or of gross or net earnings, or of any portion thereof; and in any case of an unlawful agreement for the pooling or division of traffic, service, or earnings as aforesaid each day of its continuance shall be a separate offense: *Provided*, That whenever the Commission is of opinion, after hearing upon application of any such carrier or carriers or upon its own initiative, that the pooling or division, to the extent indicated by the Commission, of their traffic, service, or gross or net earnings, or of any portion thereof, will be in the interest of better service to the public or of economy in operation, and will not unduly restrain competition, the Commission shall by order approve and authorize, if assented to by all the carriers involved, such pooling or division, under such rules and regulations, and for such consideration as between such carriers and upon such terms and conditions, as shall be found by the Commission to be just and reasonable in the premises: *Provided further*, That any contract, agreement, or combination to which any common carrier by water subject to Part III is a party, relating to the pooling or division of traffic, service, or earnings, or any portion thereof lawfully existing on the date this paragraph as amended takes effect, if

filed with the Commission within six months after such date, shall continue to be lawful except to the extent that the Commission, after hearing upon application or upon its own initiative, may find and by order declare that such contract, agreement, or combination is not in the interest of better service to the public or of economy in operation, or that it will unduly restrain competition.

“(2) (a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier and terminals incidental thereto.

“(b) Whenever a transaction is proposed under subparagraph (a), the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in section 205 (c)), and shall

afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing, and a public hearing shall be held in all cases where carriers by railroad are involved. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

\*(c) In passing upon any proposed transaction under the provisions of this paragraph (2), the Commission shall give weight to the following considerations, among others:

(1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

\*(d) The Commission shall have authority in the case of a proposed transaction under this paragraph (2) involv-

ing a railroad or railroads, as a prerequisite to its approval of the proposed transaction, to require, upon equitable terms, the inclusion of another railroad or other railroads in the territory involved, upon petition by such railroad or railroads requesting such inclusion, and upon a finding that such inclusion is consistent with the public interest.

“(e) No transaction which contemplates a guaranty or assumption of payment of dividends or of fixed charges, shall be approved by the Commission under this paragraph (2) except upon a specific finding by the Commission that such guaranty or assumption is not inconsistent with the public interest. No transaction shall be approved under this paragraph (2) which will result in an increase of total fixed charges, except upon a specific finding by the Commission that such increase would not be contrary to public interest.

“(f) As a condition of its approval, under this paragraph (2), of any transaction involving a carrier or carriers by railroad subject to the provision of this part, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other

provisions of this Act, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

“(3) Whenever a person which is not a carrier is authorized, by an order entered under paragraph (2), to acquire control of any carrier or of two or more carriers, such person thereafter shall, to the extent provided by the Commission in such order, be considered as a carrier subject to such of the following provisions as are applicable to any carrier involved in such acquisition of control: Section 20 (1) to (10), inclusive, of this part, sections 204 (a) (1) and (2) and 220 of part II, and section 313 of part III (which relate to reports, accounts, and so forth, of carriers), and section 20a (2) to (11), inclusive, of this part, and section 214 of part II (which relate to issues of securities and assumptions of liability of carriers), including in each case the penalties applicable in the case of violations of such provisions. In the application of such provisions of section 20a of this part and of section 214 of part II, in the case of any such person, the Commission shall authorize the issue or assumption applied for only if it finds that such issue or assumption is consistent with the proper performance of its service to the public by each carrier which is under the control of such person, that it will not impair the ability of any such carrier to perform such service, and that it is otherwise consistent with the public interest.

“(4) It shall be unlawful for any person, except as provided in paragraph (2), to enter into any transaction within the scope of subparagraph (a) thereof, or to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more carriers, however such result

is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or management accomplished or effectuated after the enactment of this amendatory paragraph and in violation of its provisions. As used in this paragraph and paragraph (5), the words "control or management" shall be construed to include the power to exercise control or management.

"(5) For the purposes of this section, but not in anywise limiting the application of the provisions thereof, any transaction shall be deemed to accomplish or effectuate the control or management in a common interest of two carriers—

(a) if such transaction is by a carrier, and if the effect of such transaction is to place such carrier and persons affiliated with it, taken together, in control of another carrier;

(b) if such transaction is by a person affiliated with a carrier, and if the effect of such transaction is to place such carrier and persons affiliated with it, taken together, in control of another carrier;

(c) if such transaction is by two or more persons acting together, one of whom is a carrier or is affiliated with a carrier, and if the effect of such transaction is to place such persons and carriers and persons affiliated with any one of them and persons affiliated with any such affiliated carrier, taken together, in control of another carrier.

"(6) For the purposes of this section a person shall be held to be affiliated with a carrier if, by reason of the relationship of such person to such carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or any

other direct or indirect means), it is reasonable to believe that the affairs of any carrier of which control may be acquired by such person will be managed in the interest of such other carrier.

“(7) The Commission is hereby authorized, upon complaint or upon its own initiative without complaint, but after notice and hearing, to investigate and determine whether any person is violating the provisions of paragraph (4). If the Commission finds after such investigation that such person is violating the provisions of such paragraph, it shall by order require such person to take such action as may be necessary, in the opinion of the Commission, to prevent continuance of such violation. The provisions of this paragraph shall be in addition to, and not in substitution for, any other enforcement provisions contained in this part; and with respect to any violation of paragraphs (2) to (12), inclusive, of this section, any penalty provision applying to such a violation by a common carrier subject to this part shall apply to such a violation by any other person.

“(8) The district courts of the United States shall have jurisdiction upon the complaint of the Commission, alleging a violation of any of the provisions of this section or disobedience of any order issued by the Commission thereunder by any person, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain such person from violation of such provision or to compel obedience to such order.

“(9) The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraph (1), (2), or (7), as it may deem necessary or appropriate.

“(10) Nothing in this section shall be construed to require the approval or authorization of the Commission in the case of a transaction within the scope of paragraph

(2) where the only parties to the transaction are motor carriers subject to part II (but not including a motor carrier controlled by or affiliated with a carrier as defined in section 1 (3) and where the aggregate number of motor vehicles owned, leased, controlled, or operated by such parties, for purposes of transportation subject to part II, does not exceed twenty.

(11) The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall have full power (with the assent, in the case of a purchase and sale, a lease, a corporate consolidation, or a corporate merger, of a majority, unless a different vote is required under applicable State law, in which case the number so required shall assent, of the votes of the holders of the shares entitled to vote of the capital stock of such corporation at a regular meeting of such stockholders, the notice of such meeting to include such purpose, or at a special meeting thereof called for such purpose) to carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under State authority; and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are hereby relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transactions so approved or provided for in accordance with the terms and conditions, if any imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or

franchises acquired through such transaction. Nothing in this section shall be construed to create or provide for the creation, directly or indirectly, of a Federal corporation, but any power granted by this section to any carrier or other corporation shall be deemed to be in addition to, and in modification of its power under its corporate charter or under the laws of any State.

“(12) If any provision of the foregoing paragraphs of this section, or the application thereof to any person or circumstances, is held invalid, the other provisions of such paragraphs, and the application of such provision to any other person or circumstances, shall not be affected thereby.

“(13) As used in paragraphs (2) to (12), inclusive, the term ‘carrier’ means a carrier by railroad and an express company, subject to this part; a motor carrier subject to part II; and a water carrier subject to part III.

“(14) Notwithstanding the provisions of paragraph (2), from and after the 1st day of July 1914, it shall be unlawful for any carrier as defined in section 1 (3), or (after the date of the enactment of this amendatory section) any person controlling, controlled by, or under common control with, such a carrier to own, lease, operate, control, or have any interest whatsoever (by stock ownership or otherwise, either directly, indirectly, through any holding company, or by stockholders or directors in common, or in any other manner) in any common carrier by water operated through the Panama Canal or elsewhere with which such carrier aforesaid does or may compete for traffic or any vessel carrying freight or passengers upon said water route or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic; and in case of the violation of this provision each day in which such violation continues shall be deemed a separate offense.

“(15) Jurisdiction is hereby conferred on the Commission to determine questions of fact, arising under para-

graph (14), as to the competition or possibility of competition, after full hearing, on the application of any railroad company or other carrier. Such application may be filed for the purpose of determining whether any existing service is in violation of such paragraph and may pray for an order permitting the continuance of any vessel or vessels already in operation, or may pray for an order under the provisions of paragraph (16). The Commission may on its own motion or the application of any shipper institute proceedings to inquire into the operation of any vessel in use by any railroad or other carrier which has not applied to the Commission and had the question of competition or the possibility of competition determined as herein provided. In all such cases the order of said Commission shall be final.

“(16) Notwithstanding the provisions of paragraph (14), the Commission shall have authority, upon application of any carrier, as defined in section 1 (3), and after hearing, by order to authorize such carrier to own or acquire ownership of, to lease or operate, to have or acquire control of, or to have or acquire an interest in, a common carrier by water or vessel, not operated through the Panama Canal, with which the applicant does or may compete for traffic, if the Commission shall find that the continuance or acquisition of such ownership, lease, operation, control, or interest will not prevent such common carrier by water or vessel from being operated in the interest of the public and with advantage to the convenience and commerce of the people, and that it will not exclude, prevent, or reduce competition on the route by water under consideration: *Provided*, That if the transaction or interest sought to be entered into, continued, or acquired is within the scope of paragraph (2) (a), the provisions of paragraph (2) shall be applicable thereto in addition to the

provisions of this paragraph: *And provided further*, That no such authorization shall be necessary if the carrier having the ownership, lease, operation, control, or interest has, prior to the date this section as amended becomes effective, obtained an order of extension under the provisions of paragraph (21) of this section, as in effect prior to such date, and such order is still in effect."

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No. 81

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*In the Supreme Court of the United States*

OCTOBER TERM, 1943

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McLEAN TRUCKING COMPANY, INC., THE SECRETARY  
OF AGRICULTURE OF THE UNITED STATES, AND  
AMERICAN FARM BUREAU FEDERATION, APPEL-  
LANTS

v.

THE UNITED STATES OF AMERICA, INTERSTATE COM-  
MERCE COMMISSION, ASSOCIATED TRANSPORT, INC.,  
BARNWELL BROTHERS, INC., ET AL, APPELLEES

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APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

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BRIEF FOR THE INTERSTATE COMMERCE COMMISSION

NOVEMBER 1943.

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**ARGUMENT—Continued.**

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3. The Commission's authorizations of motor carrier consolidations, as well as its authorizations of railroad, water carrier, and other carrier consolidations, are provided for in section 5 of the Act and are governed, not by a special criterion, but by the same criterion of the "public interest," supplied by the Act to govern all such authorizations.

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## STATUTES CITED

<i>Interstate Commerce Act</i> (49 U. S. C. 1 et seq.):	
Sec. 5 (2) (a), (b), (c), (d), (e), (f).....	5, 38, 42, 67, 71, 83, 96, 107
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<i>Sherman Antitrust Act</i> , July 2, 1890 (26 Stat. 209):	
Sec. 1.....	90, 91, 92
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# In the Supreme Court of the United States

OCTOBER TERM, 1943

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No. 31

McLEAN TRUCKING COMPANY, INC., THE SECRETARY  
OF AGRICULTURE OF THE UNITED STATES, AND  
AMERICAN FARM BUREAU FEDERATION, APPEL-  
LANTS

v.

THE UNITED STATES OF AMERICA, INTERSTATE COM-  
MERCE COMMISSION, ASSOCIATED TRANSPORT, INC.,  
BARNWELL BROTHERS, INC., ET AL., APPELLEES

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APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

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BRIEF FOR THE INTERSTATE COMMERCE COMMISSION

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## OPINIONS BELOW

The opinion of the specially constituted District  
Court (R. 82) is reported in 48 F. Supp. 933.  
The report of the Interstate Commerce Commis-  
sion (R. 8) is reported in 38 M. C. C. 137.

## STATUTES INVOLVED

The pertinent provisions of the Interstate Com-  
merce Act are set forth in the Appendix.

## QUESTIONS PRESENTED

The Commission, acting upon two applications of the appellee, Associated Transport, Inc., the one being filed under the "consolidation" provisions (Section 5) of the Interstate Commerce Act and the other being filed under the "securities" provisions (Section 214) of that Act, granted the applicant authority as follows: (1) to acquire control, through purchase of capital stock, of several common carriers by motor vehicle and, thereafter (within one year from date of the acquisition of control) to consolidate into itself the properties and operating rights of those carriers; and (2) to issue certain specified shares of its preferred and common stock to enable it to consummate the transactions (as agreed upon with the stockholders of the constituent carrier companies) and to provide funds for working capital and other corporate purposes. Prominent among the matters urged, in the Commission proceeding by interveners opposing the applications was the contention that the Commission, in approving proposed transactions under section 5, was limited to such in respect whereof it could make certain specified findings which it was considered were required in order to conform the Commission's authorization to the antitrust laws; and this contention the Commission did not consider to be sound, particularly in view of the provisions of paragraph (11) of section 5 according relief from

the antitrust laws to any carriers and persons participating in a transaction approved by it under section 5. The lower court upheld the Commission's construction of the statute in this and other particulars and sustained its orders as in all respects valid; and the ultimate question presented is whether it erred in so doing. Subordinate questions presented are:

1. Whether the Commission, in approving the proposed transactions, acted under a misconception of the statute and its authority, and
2. Whether its orders approving and authorizing the transactions were supported by adequate findings and substantial evidence.

### **STATEMENT**

This is a direct appeal from a final decree (R. 89) of the court below dismissing a bill of complaint filed by the appellant, McLean Trucking Company, Inc., seeking to have enjoined and set aside certain orders of the Commission. The other appellants herein, namely, the Secretary of Agriculture and American Farm Bureau Federation, had intervened in the suit in support of the bill.

#### **1. Commission proceedings**

The Commission proceedings, in which the orders were entered, are Docket No. MC-F-1612, *Associated Transport, Inc.-Control and Consolidation-Arrow Carrier Corporation et al.*, and

Docket No. MC-F-1613, *Associated Transport, Inc.-Issuance of Securities*, and they were instituted by the filing with the Commission, July 25, 1941, of two applications by Associated Transport, Inc., one of the appellees herein. By the first of the applications, Associated Transport sought authority under section 5 of the Interstate Commerce Act (1) to acquire control, through purchase of capital stock, of the following eight common carriers by motor vehicle:

Arrow Carrier Corporation, Paterson, N. J.  
Barnwell Brothers, Incorporated, Burlington, N. C.

Consolidated Motor Lines, Incorporated, Hartford, Conn.

Horton Motor Lines, Incorporated, Charlotte, N. C.

McCarthy Freight System, Inc., Taunton, Mass.

M. Moran Transportation Lines, Inc., Buffalo, N. Y.

Southeastern Motor Lines, Incorporated, Bristol, Va.

Transportation, Incorporated, Atlanta, Ga.<sup>1</sup>

and (2) to consolidate into itself the properties and operating rights of these carriers within one year from date of acquisition of control. By

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<sup>1</sup> These companies will hereinafter be referred to as Arrow, Barnwell, Consolidated, Horton, McCarthy, Moran, Southeastern, and Transportation, respectively. The territories of their operations are briefly described in subparagraphs (b)-(i), inclusive, of Paragraph III of the bill of complaint (R. 2-3).

the second of its applications, Associated Transport sought authority under section 214, Part II of the Act, to issue 54,049 shares of preferred and 880,311 shares of common stock, having par value of \$100 and \$1, respectively, to enable it to acquire control of the said companies and four associated noncarrier companies<sup>2</sup> to provide funds for working capital and other corporate purposes, and for conversion from time to time of the preferred stock proposed to be issued.

Under section 5 (2) (b) of the Interstate Commerce Act the Commission is empowered to approve acquisitions of control, mergers, and consolidations of carriers subject to its jurisdiction upon findings that "the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest";<sup>3</sup> and its said approval operates to relieve the carriers participating in the transaction from the antitrust laws and all other restraints or prohibitions of law, as provided in section 5 (11) of the Act, which reads in part as follows:

*The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or re-*

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<sup>2</sup> Barnwell Warehouse & Brokerage Co., Brown Equipment & Storage Co., Conger Realty Co., and Southern New England Terminals, Inc. These companies are described in subparagraphs (1)-(v) of Paragraph III of the complaint (R. 4).

<sup>3</sup> The pertinent provisions of section 5 are quoted in full in the appendix.

sulting from any transaction approved by the Commission thereunder, shall have full power \* \* \* to carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under State authority; and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section *shall be and they are hereby relieved from the operation of the antitrust laws, and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved* \* \* \*. [Emphasis supplied.]

Under section 214 of Part II, common or contract carriers, corporations organized for the purpose of engaging in transportation as such carriers and corporations authorized by the Commission to acquire control of any such carriers, are made subject to section 20a (2)-(11) of Part I of the Act which forbid the issuance of securities and assumption of obligations in respect of securities unless the Commission's authority therefor is first obtained, and which empower the Commission to grant such authority—

if it finds that such issue or assumption:  
(a) is for some lawful object within its

corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.

The applicant, Associated Transport, is a Delaware Corporation and was organized March 5, 1941, for the purpose of effectuating the transactions proposed and was not at the time engaged in any operations.<sup>4</sup> The motor carriers involved operated principally as common carriers of general commodities over regular routes, and together served the principal points in Massachusetts, Rhode Island, Connecticut, New York, Eastern Pennsylvania, New Jersey, Delaware, Maryland, the District of Columbia, Virginia and North Carolina. Their routes also extended from points in such area to Cleveland, Pittsburgh, Nashville, and Chattanooga, Tenn., Great Falls and McColl, S. C., and to New Orleans, La., and Pensacola, Fla., via Atlanta, Ga., and Montgomery, Ala.

The applications were heard upon a consolidated record. The Antitrust Division of the Department of Justice, the Secretary of Agricul-

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<sup>4</sup> Associated Transport was organized as the vehicle through which it would be most convenient for the constituent companies to work out the unification through exchange of stock (R. 511-512).

ture, four fruit growers' associations, and Super Service Motor Freight Company, a motor carrier, intervened in opposition to the granting of the authority applied for. A number of other motor carriers, shippers, and shipper organizations, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America also intervened, but, excepting the last-named organization, which at the close of the hearings announced its support of the applications, took no definite position thereon (R. 10).

The hearings were held before an examiner and a large volume of evidence was introduced, both oral and documentary. A report, proposed by the examiner, was served on the parties, exceptions were filed thereto by the interveners opposing the applications, and the matter was orally argued before the Commission on January 26, 1942. On March 16, 1942, the Commission issued its report and orders granting its authority for the unification and consolidation, and for the issuance of securities, substantially as applied for but with certain conditions attached.

In a previous decision, *Transport Co.—Control—Arrow Carrier Corp. et al.*, 36 M. C. C. 61, the Commission had refused authority for a proposed unification through a holding company of 29 motor carriers, among which were included the 8 motor carriers herein involved. Subse-

quently the latter carriers became more than ever convinced of the urgent need for consolidating their operations and, in the view that the earlier decision pointed the way to a permissible consolidation, entered into arrangements intended to conform thereto (R. 523) and which formed the basis of the applications filed by the appellee Associated Transport. One of the principal objections to the earlier application was that under the plan which was there proposed, and condemned as wasteful, of continuing the 29 carriers as separate corporate entities without "definite plan for effectuating 'single title'", the result of permitting the unification would, as stated by the Commission, have been "that two or more carriers under common control would be authorized to engage in duplicate operations over a large majority of the routes and throughout most of the territory involved" (36 M. C. C. 61, 86-87). The plan in the instant case was designed to avoid such objection and, referring to this, the Commission said that, while there was a substantial amount of duplicating operations involved in the case before it, the application, nevertheless, was not open to the objection of wastefulness for the reasons that the authority sought was an authority under which the stock control acquired was to continue for not more than one year; that the specific purpose of the period of stock control was to enable the effectuat-

ing of consolidation while at the same time avoiding certain substantial losses that would result from immediate consolidation; and that, in these circumstances, the acquisition of stock control was simply a step in effectuating the objective of consolidation (R. 21).

The question of the effect of the consolidation on the employees of the constituent companies was raised in the proceeding and the applicant's officers gave assurance that no dismissal of employees would result therefrom. Based on this and the showing in evidence that the demand for transportation was increasing and that there was an evident shortage of experienced personnel, the Commission considered that no substantial hardship would result to employees and that any minor detriment would be offset by the advantages that would accrue to them from the lower operating costs and greater stability of the applicant as compared with the respective carriers involved. At the oral argument the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, which had previously been opposed, announced that it supported the applications (R. 18, 19).

With respect to the economies and greater efficiency that might be expected to result from consolidation, the evidence was very strong. In the matter of equipment, it was shown that unification of operations would permit of a more efficient and

complete utilization of the equipment of the several carriers both by enabling an assignment of the vehicles best conforming to needs and by enabling consolidation of the tonnage of the carriers, which latter would result in a higher load factor for vehicles used in over-the-road service and a large reduction in the number of vehicles required for "peddler" runs and pick-up-and-delivery service (R. 15-16). In the matter of terminal facilities, it was shown that the 8 carriers maintained 179 separate terminals in 129 cities and towns, and that this situation permitted of large savings and improved service through consolidation and rearrangement of use (R. 16). In the matter of general and administrative expense, insurance and certain other expense, it was shown that the savings that could be effected by unification of the management of the 8 companies under the one head was very marked (R. 17-18).

An especially important improvement in service which it was shown would be made possible, or at least greatly facilitated, was the inauguration, planned by Associated Transport, of through-trailer service between points where sufficient traffic was available to justify such service. This it was shown "would reduce terminal costs, loss and damage claims, and the time in transit by from 6 to 36 hours" (R. 16, 17, 596).

Concerning the effect of the proposed consolidation in the matter of lessening or restraining

competition: A duplication of about one-third of the whole existed in the regular routes operated over by the 8 carriers involved and, while the actual competition was less than thereby indicated because of differences in traffic handled and restrictions in the respective operating authorities, nevertheless, the competition, as between carriers included in the consolidation, was substantial (R. 22). As broadly illustrative, the carriers McCarthy and Consolidated were substantially competitive throughout Massachusetts, Connecticut, and Rhode Island, although Consolidated was the only carrier involved which operated between New York City and points in the New England States (R. 23-24). Consolidated and Moran were competitive between the principal points in New York State, the routes of Moran, however, being considerably more extensive than those of Consolidated within New York and also extending to Cleveland, Ohio, and points in northern Pennsylvania which were not served by any of the other carriers involved (R. 26-27). As to those portions of the Middle Atlantic region other than New York, some considerable competition existed between the carriers, Barnwell, Horton, and Southeastern, which operated in that region and over routes extending from points in the South. Competition between these carriers was greatly restricted by differences in their respective operating authorities, but certain of their important

operations were competitive (R. 27-29). And, as to the Southern Region, Southeastern was not competitive with any other carrier involved in the consolidation except to a very limited extent. Barnwell and Horton, however, were competitive in some important operations, which was also true in lesser degree of Transportation (R. 29-30). In short, as above stated, while the competition between the 8 carriers, which would be eliminated by the consolidation proposed, was less than indicated by the one-third duplication in highway mileages, it was, nevertheless, substantial. On the other hand, the competition which would be left was abundant, as afforded by the numerous motor carriers operating over the highways involved and also by rail and water carriers, car-loading and forwarding companies, and other forms of transportation.

Referring to this, the Commission in its report stated that lists before it of motor carriers which operated in the New England region showed 359 carriers of which 103 were Class I carriers (R. 23). Speaking of certain of the principal carriers, it said:

Adley Express Company, Inc., is authorized to operate as a common carrier of general commodities over a network of regular routes blanketing the States of Connecticut, Massachusetts, and Rhode Island and therefrom to Albany and New York,

N. Y., and Philadelphia, Pa. It can serve every point in the New England territory served by Consolidated and McCarthy. New England Transportation Company \* \* \* has almost equal coverage in such territory, its routes extending therefrom to New York City and Poughkeepsie, N. Y., \* \* \* Seaboard Freight Lines, Inc., a subsidiary of Keeshin Freight Lines, Inc., conducts operations of the same character over a network of regular routes extending to Syracuse, N. Y., on the west, Fitchburg and Boston, Mass., on the north and east and Washington, D. C., on the south, with service to intermediate and numerous off-route points, including most of the principal points in the region under consideration.

The Commission also referred to an analysis made in an exhibit of record of the motor-carrier competition existing between points of operation in New England of the carriers, McCarthy and Consolidated. This analysis was based on the operation of 294 carriers, including 84 Class I carriers, and showed, among other things, that the number of Class I carriers operating between such points was in no case less than 2 and ranged as high as 32 (R. 24-25). Another exhibit, referred to by the Commission, analyzed the competition afforded by the operations of 76 general commodity carriers, including 39 Class I carriers, between various New England points, on the one

hand, and New York City, Jersey City, Newark, and Philadelphia, on the other. This latter exhibit showed among other things, that 28 Class I carriers operated between Boston and New York City and 8 between Boston and Philadelphia.

As for the extent and strength of the motor-carrier competition that would be left after the consolidation in the Middle Atlantic region, including New York, and in the Southern region, the Commission's review of the evidence showed that the situations would be substantially the same as in the territory served by McCarthy and Consolidated (R. 26-32).

Speaking of the position of the Antitrust Division that the indirect effect of the consolidation was matter of more concern than the direct elimination of competition between the carriers involved because the consolidated company would be so dominant in the territory that it would be able to restrain the competition of independent motor carriers, the Commission stated that experience with other large motor-carriers systems in the Middle Atlantic and Central regions had not demonstrated that such result would be likely to follow; that in view of the great number of existing motor carriers, the small amount of capital required to enter that transportation field and the advantages that small operators have through intimate relations with shippers and ability to render a more personalized

service, there was little reason to be apprehensive of monopoly at this stage of the development of the trucking industry (R. 33-34). Further in this connection the Commission said (R. 35):

The large size of a motor carrier which would result from a unification alone does not constitute sufficient ground for denial of an application. Application of such a policy would tend to freeze the motor-carrier industry at its present level. Such transportation, compared with rail and water transportation, is still in its infancy, and arbitrary restrictions upon its natural development into large units solely by reason of comparative size would not be in the public interest. \* \* \*

Following its review of the competitive situation in the territory operated in by the 8 motor carriers, the Commission found that the consolidation would leave ample competitive motor-carrier service through the territory involved, and that in addition competition would be afforded by rail carriers, car-loading and forwarding companies, motor vehicle contract carriers and other forms of transportation (R. 32). It concluded that the consolidation would not result in undue restraint of competition (R. 37).

#### Issuance of securities

With respect to the application by Associated Transport under the securities section of the Act, the authority sought by the applicant was to issue

securities as follows: (1) Such shares of preferred and common stock as were necessary to consummate its contracts to acquire the capital stocks of the 8 carrier companies and 4 associated noncarrier companies, (2) such further shares of common stock as might be required from time to time in conversion of preferred stock, and (3) 15,000 shares of preferred stock to be sold to the public, the proceeds of which would be used for working capital and other purposes (R. 38).

The applicant had entered into separate contracts with the stockholders of the carrier and noncarrier companies involved whereby it would acquire all outstanding stock of each of those companies,<sup>5</sup> except that with respect to Arrow, it would acquire all of its common and 1,120 of 1,380 shares outstanding, of its preferred stock,<sup>6</sup> and except that with respect to Horton, it would acquire all of its common but none of its preferred stock.<sup>7</sup> The contracts were substantially uniform,

<sup>5</sup> For statement of the purposes and general plan of the consolidation and negotiations, see testimony, Witness Horton, R. 507-516; Witness Seymour, R. 574-580, 590-603.

<sup>6</sup> It was understood that that portion of Arrow's preferred stock not acquired by the applicant would be redeemed either prior to or shortly after completion of the purchase. The agreement respecting Arrow's stock was entered into with The Transport Co. The latter was not owner of the common stock which it undertook to sell, but under agreement with Arrow's common stockholders described in the *Transport Co. case, supra*, it had an option to purchase the stock (R. 12, 583).

<sup>7</sup> Horton, in addition to its common stock outstanding, had issued 2,666 shares of \$20-par-value employees preferred

the contracting stockholders of each company agreeing to an exchange of their stock as a whole for shares of the capital stock of the applicant as follows: Preferred shares of the applicant having a total par value equal to 80 percent of the net worth, April 30, 1941, of the particular company; and common shares of a total par value equal to an amount obtained by deducting from the company's net profit for the year ended April 30, 1941, a sum equal to 6 percent of the par value of the preferred shares received, and dividing the remainder by two (R. 13).

Net worth and net profit of a company for the purposes of the agreements were determinable in accordance with formulae described therein (R. 13, 576). Special deductions were to be made, however, from the net worth of certain of the companies: From Arrow and Horton, because of the preferred stock of those companies which would not be acquired by the applicant; from Arrow, because of a \$12,000 payment which it was obligated to make to cancel an employment

stock and had received subscriptions for 276 additional shares. Such stock was redeemable at par plus accrued dividends, and it was understood that it would be called for redemption prior to consummation of the proposed transactions (R. 12).

<sup>8</sup> This was subject to the provision that, if any increase in net worth resulted from application of rates of depreciation fixed in the formulae, the vendor stockholders would not receive additional preferred stock, but, instead, common stock of a par value equal to 4 percent of the amount of the increase (R. 13).

agreement with one of its officers; and from Consolidated, because of a \$36,000 expenditure made after April 1, 1941, in buying 90 shares of its outstanding stock (R. 12-13).<sup>9</sup> Also, in determining the amounts of stock of the applicant to be exchanged for stock of the respective companies, some special adjustments were made because of situations peculiar to certain of the companies (R. 13).<sup>10</sup>

The applicant's charter authorized issuance of 100,000 shares of \$100-par-value preferred stock and 1,000,000 shares of \$1-par-value common stock, of which 71,480 shares of common had been issued to provide for organization expenses and for prosecution of the Commission proceedings, 9,000 shares thereof having been delivered to the Transport Company in exchange for engineering and accounting data which had been developed by

<sup>9</sup> The net worth and net income of the companies, as adjusted, are shown in Appendix C of the Commission's report, which also shows the amounts of the applicant's stock issuable to the stockholders of the respective companies (R. 1458, Ex. 13). For explanation of audit of accounts of companies as a basis for the exchange, see testimony of Witness Reicher, R. 986-1000, 1008 et seq.

<sup>10</sup> A number of restrictions were imposed in the contracts calculated to preserve the assets of the respective companies whose stock would be acquired, such as limitations on salaries, expenditures out of the ordinary, dividend declarations, and the like, and the consummation of each contract was conditioned upon the Commission's approval and also upon the Commissioner of Internal Revenue entering into an agreement, that the contemplated transaction constitutes a tax-free reorganization (R. 14, 15).

that company in the earlier *Transport Co. case*, *supra* (R. 10-11),<sup>11</sup> and the remainder having been subscribed and paid for at par, in part by stockholders of the companies involved and in part by B. M. Seymour, president of the applicant.<sup>12</sup>

The totals of the shares of stock, for issuance of which the applicant required the Commission's authority, were 54,049 of preferred and 860,411 of common stock. These amounts included the 15,000 shares of preferred stock to be sold to the public for cash and 211,768 shares of common to be issued from time to time as necessary for conversion purposes (R. 38-39).<sup>13</sup> The shares to be issued in consummation of the contracts for acquisition of the stocks of the subsidiary companies were 39,049 of preferred and 648,643 of common stock; and of these latter 1,107 shares of preferred and 15,472 shares of common, issuable to Barnwell Warehouse, would be sub-

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<sup>11</sup> R. 540.

<sup>12</sup> B. M. Seymour, not being an owner of the stock of any of the companies included in the consolidation, obtained a stock interest in Associated Transport by subscribing for 31,240 shares of the stock so issued for preliminary expenses (R. 519, 557, 575).

<sup>13</sup> At option of the holder, the preferred stock is convertible into common as follows: During first 3 years, 4 of common for 1 of preferred; during second 3 years, 3 $\frac{1}{3}$  common for 1 of preferred; and thereafter, 3 for 1. The preferred stock entitled holders to 6% cumulative dividends, and, in the event of liquidation, to \$103 per share plus accumulated dividends before any distribution to holders of common stock (R. 38).

sequently cancelled (R. 38),<sup>14</sup> thus leaving outstanding, as issued against the stocks of the subsidiary companies received by the applicant under the contracts, 37,942 shares of the applicant's preferred and 635,171 shares of its common stock, having a total par value of \$4,427,371 (R. 38). As of April 30, 1941, the aggregate net worth of the companies whose stocks were to be acquired was \$4,900,245, after adjustments pursuant to the contracts (R. 38; Appendix C to Report, R. 55).<sup>15</sup>

As for the situation that would exist upon actual consolidation of the carrier companies into the applicant, this was shown by a balance sheet statement of the applicant as of June 30, 1941, which was particularly prepared to reflect that situation, including the issuance of all proposed stock and the assumption by applicant of obligation with respect to certain long-term securities of the companies involved. It reflected a capitalization of \$7,263,593 comprised of \$5,998,-

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<sup>14</sup> Barnwell Warehouse owned, in addition to its other assets, a substantial amount of the stock of Barnwell, and, under the applicant's contract with stockholders of Barnwell, would receive the said 1,107 shares of applicant's preferred and 15,472 shares of its common stock. This stock, it was considered, would be, in effect, reacquired by the applicant in acquiring control of Barnwell Warehouse and was therefore treated as deducted from the total of applicant's shares given in exchange for the stock of Barnwell Warehouse in arriving at the net consideration for the operating assets of that company (R. 14, 38, 1012).

<sup>15</sup> Ex. 12, R. 1427; Ex. 13, 1458; Witness Reicher, R. 1009-1024

851 of capital stock, \$867,336 of equipment obligations and \$397,406 of other long-term obligations (R. 39-40). The assets supporting such capitalization, including proceeds from sale of the 15,000 of preferred stock, appeared as follows:

Cash .....	\$1, 956, 858
Material and supplies.....	667, 172
Tangible property.....	5, 140, 339
Total.....	<u>\$8, 140, 429</u>

Commenting on this statement the Commission noted the fact that it showed that the applicant's total assets would exceed its capital liabilities by \$876,836.

Following discussion thereof the Commission approved the applicant's proposed issue of 15,000 shares of preferred for sale at par to the public, but subject to the condition that any agreement "by applicant for the sale or underwriting of such stock shall first be submitted to and approved by us" (R. 42-43); and it also approved the other proposed issues of stock, preferred and common, but subject generally to the condition that the applicant's articles of incorporation should be changed so as to provide:

\* \* \* (1) That holders of its preferred stock, voting separately as a class, in the event of default in payment of dividends upon such preferred stock for two years or more, and until all dividends in arrears on such stock are paid, shall be

entitled at any stockholders' meeting held for that purpose to elect a majority of applicant's board of directors; and (2) that its common stock shall be without par value.

In imposing the first condition, the Commission stated, in effect, that, while both preferred and common stockholders were entitled to one vote for each share of stock held, the change prescribed would effect a more equitable situation in the event that dividends on the preferred should become in arrears (R. 42) and, in imposing the second condition that the common stock be changed to stock having no par value, the Commission said (R. 41):

\* \* \* If par-value common stock were issued, as proposed, upon conversion at the highest rate provided, for each share of preferred stock cancelled, par value \$100, 4 shares of common, par value \$4, would be issued. The difference of \$96 presumably would be credited to surplus. Thus, using the foregoing pro forma balance sheet as a basis, if all the preferred stock were converted at that rate, applicant's capital stock account would be reduced from \$5,998,851 to \$916,419. The balance sheet would then create a misleading impression with respect to original investment. \* \* \*

As for the assumption by applicant of obligation with respect to equipment and other long-term securities of the companies involved, the Commission deferred consideration thereof upon

representation by the applicant that some of these securities would be liquidated prior to actual consolidation and that it would make timely and appropriate application for any authority with respect thereto as might be necessary under section 214 (R. 42).

Following further discussion in its report of the betterments in service and large economies that would be enabled by the consolidation and the fact that the particular consolidation was markedly free from the large promotional and organization fees and other "ills" often accompanying consolidations of common carriers (R. 44),<sup>16</sup> the Commission made its ultimate findings, (1) that the proposed acquisition of control and consolidation upon the modified terms and conditions prescribed was a transaction within the scope of section 5 (2) (a) of the Act, and would be consistent with the public interest; and (2) that the proposed issuance of securities by the applicant was "for a lawful object within its corporate purposes, and compatible with the public interest" etc. (R. 45-46).

The Commission also made findings conferring on the applicant the right upon consummation of the consolidation to continue operations covered by pending "grandfather" applications of the constituent carriers and the right to a certificate covering such operating rights as have already

<sup>16</sup> R. 523, 525, 576.

been granted to those carriers and such as may be thereafter granted in pending "grandfather" proceedings.

## 2. Proceedings in the lower court

The prayer of the bill of complaint asking for the setting aside of the Commission's authorization of the consolidation of motor carriers and issuance of securities rested upon allegations of invalidity contained in subparagraphs (a) to (i) of paragraph VII of the bill of complaint (R. 6-7). Included among the allegations, there were two which related only to the inclusion of Arrow carrier and which the lower court held, for reasons presently to be given, had been eliminated from the case. Briefly stated, the other, or general, allegations were that the Commission's authorization was founded on an interpretation of the Interstate Commerce Act which was unsound in principle and arbitrary (para. (a)), including an interpretation of section 5, shown "at pages 17 and 18 of the Commission's report" (R. 22), that adopts criteria for the consolidation of motor carriers which are erroneous and will result in restraint of competition (para. (d)); that the authorization was not supported by the necessary findings (para's. (b) and (h)) and that the findings made were not supported by the evidence (para's. (c), (g) and (h)). Dealing with these allegations the lower court held (R. 85-86) that the Commission had not misinterpreted the Act.

but, on the contrary, had correctly interpreted it in all respects, that the Commission had made the findings called for and that its findings were supported by adequate evidence (R. 84-85). Accordingly, the Court's decree (R. 89) denied the injunction prayed for and dismissed the bill.

As for the allegations relating to Arrow Carrier, these were to the effect—

(1) that the Commission had erred in not finding (under sec. 5 (2) (b) of the Act) that the consolidation would enable the railroads with which the applicant would be affiliated to use its motor service to public advantage and would not unduly restrain competition (para. (e)), and

(2) That it had erred in failing to find that the stock interest which would be had by Kuhn Loeb & Co., bankers for two of the largest railroads in the territory involved, would not be in the public interest (par. (f)).

The above two allegations were manifestly directed against that part of the Commission's original order which included Arrow in the authority granted the applicant. The consolidation involved no question of railroad affiliation and there was no contention that it did except the contention of certain interveners predicated upon the inclusion of Arrow and the fact that its stock was to be acquired from a company owned by Kuhn Loeb & Co., which firm had for many years been bankers for the Baltimore & Ohio and the Penn-

sylvania railroads. As shown by an amendment to the Commission's answer (R. 65-67), filed in the case and served on the parties, the contract of the applicant, Associated Transport, for the acquisition of the stock of Arrow was had with the Transport Company (a subsidiary of Kuhn Loeb & Co.) which in turn had an option to purchase the stock under an agreement with Arrow's stockholders. And it is there further shown that, while the Commission's original order of March 16, 1942, included authority with respect to Arrow, the Transport Company failed to exercise its option and make good on its contract with the applicant, in consequence whereof, the applicant petitioned the Commission for modification of its order excluding Arrow therefrom, which petition was granted by order of June 8, 1942 (R. 70-71), reading in part as follows:

It is ordered, That said petition be; and it is hereby, granted, and so much of said order of March 16, 1942, as authorize applicant to acquire control of and consolidate with Arrow Carrier Corporation and to issue its capital stock for that purpose and for conversion of preferred stock so issued be, and it is hereby, vacated and set aside.

And it is further ordered, That except as expressly modified herein said order of March 16, 1942, shall remain in full force and effect.

Referring to the allegation in the bill with respect to Arrow and the Commission's modifying order, the lower court's opinion reads (R. 85):

After the suit was brought and the answer of the Commission was filed it was amended to allege, what is now undisputed, that because of the failure to carry through negotiations for the acquisition of the stock of the Arrow Carrier Corporation the applicant petitioned the Commission for a modification of its order to exclude that carrier from the merger authorized and that was done by order entered June 8, 1942. All phases of this controversy which resulted from the inclusion of Arrow in the authorized consolidation are, therefore, eliminated and we will proceed as though Arrow had never been a party.

### SUMMARY

#### I

The lower court did not err in holding that the Commission's modifying order of June 8, 1942, excluding Arrow from the authorization granted by its order of March 16, 1942, eliminated from the case all phases of the controversy resulting from the inclusion of that carrier in the original order. The Commission, upon application by Associated Transport showing that it would be unable to include Arrow in the consolidation and that it was, moreover, no longer desirous of doing so, had by order expressly excluded Arrow from

its original authorization. Following the entry by the Commission of its said modifying order and the due notification thereof given the lower court, the only authorization before the Court was the modified authorization from which Arrow was excluded. In the circumstances it is plain that the Court was without either duty or authority to treat the authorization before it, and which it was asked to enjoin, as one which included Arrow in the consolidation thereby covered. The decisions relied upon by the appellants to show that the lower court's jurisdiction continued for purpose of considering the questions for the guidance of the Commission in the same or similar proceedings have no application to the present case.

## II

1. The Commission, in authorizing the proposed consolidation of motor carriers, did not err in holding (R. 22) that it was not the intention of Congress in enacting section 5 that it approve only such transactions as would not result in an "unreasonable" restraint of competition within the meaning of the antitrust laws. Under such an interpretation, the Commission said, the provisions of paragraph (11), expressly relieving the participating carriers from the antitrust laws, would be rendered largely meaningless. The Commission gave to the section its normal construction, that is, that it empowered it to approve

such consolidations as met the statutory standard of consolidations consistent with the public interest. It was of the view that the extent of any restraint of competition that might result was an element to be weighed against the benefits also resulting but only as an element naturally entering into its determination under the Interstate Commerce Act.

Accordingly, proceeding in accordance with such view of the statute the Commission gave full and detailed consideration to the large volume of evidence and testimony introduced bearing both on the lessening of competition that would result from the consolidation and the competition that would remain and also bearing on the contention urged by certain protestants that the applicant, Associated Transport, would be of such size and financial strength that it would be able to dominate the other carriers and suppress their competition. Based on the record before it, including fabricated evidence and the testimony of shippers and shipper representatives as well as operating men; the Commission found that, while the lessening of competition would be substantial, there would remain ample motor-carrier competition throughout the territory; that, in addition, all the principal points and many others were served by rail carriers; and that competition was also afforded by contract carriers, by carloading and forwarding companies and other forms of trans-

portation. With respect to the contention that Associated Transport would be of a size enabling it to suppress the competition of other carriers, the Commission stated that its experience with other large motor-carrier systems lead it to believe that no such result would follow, and the Commission also discussed various circumstances and transportation angles bearing this out and made findings thereon supported by evidence or testimony. Concluding that part of its report dealing with competition, the Commission found that the proposed transactions would not result in undue restraint of competition.

2. There is no substance to the appellants' contention that the Commission failed to make the findings required by section 5 (2) (c), which subparagraph provides that the Commission, when passing upon a transaction proposed under section 5, shall give weight to the consideration, among others, of the effect of the proposed transaction on adequate transportation service to the public. Predicated upon this provision the appellants urge that the Commission was authorized to approve a consolidation that substantially lessened competition only as necessary to maintain adequate transportation service for the public and only if it finds that existing service is inadequate.

The appellants emphasize their view of the importance of this latter finding as a prerequisite

to the approval of a consolidation that would ensure for the public what they term "future" improvements and betterments in service by stating that the said existing service rendered the public must be "clearly inadequate" and shown to be such by "present existing facts that may be examined." It is apparent from this that the appellants' "reading" of Congress' purpose to ensure, or maintain, an adequate transportation service for the public is one that places unwarranted stress on the maintaining of a transportation service that might be considered adequate based on a standard of adequacy judged and determined by existing transportation service and excluding the improvements and betterments that could be achieved through a consolidation of carriers. But the fact that Congress' purpose to ensure an adequate transportation service was not a purpose to ensure, or maintain, for the public a transportation service of such qualified adequacy, is shown by the obvious fact that the phrase "adequate transportation service to the public" incorporated into section 5 (2) (c) by the 1940 amendments to the Act was adopted from the familiar policy of Transportation Act, 1920, to ensure an adequate transportation service for the public. This policy has been discussed and explained by many decisions of this Court, including decisions construing and applying it directly to the provisions of section 5. The deci-

sion in *Texas v. United States*, 292 U. S. 522, was such a decision and this Court, there referring to the amendments made to section 5 by Emergency Transportation Act, 1933, said that these enlarging provisions strengthened and carried forward the policy and purposes of Transportation Act, 1920; and, in applying those purposes to the standard of "the public interest" furnished by section 5 for Commission guidance, it said that phrase—

has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities. *New York Central Securities Corp. v. United States*, *supra*.

The fact that the conditions of economy and efficiency and best use of transportation facilities are essential to the adequate transportation service which it is the purpose of section 5 to maintain shows that purpose is not restricted to the maintaining for the public of a transportation service of the limited adequacy suggested by the appellants.

3. Certain of the appellants' allegations and certain of their argument convey the initial impression that it is their position that, while under the 1940 amendments to section 5, the authorizations of rail and other Part I carrier consolidations continue to be governed by the standards and criteria embodied in the policy of Transportation

Act, 1920, this is not so with respect to consolidations of motor carriers but that the authorizations of such consolidations are governed by special standards and criteria embodying the restrictive policies of the antitrust laws. Closer study of their argument shows that this is not the intended meaning but that, instead, it is their contention in substance that Congress, when enacting the Motor Carrier Act of 1935 and providing therein for motor carrier consolidations, adopted standards and criteria different from those governing authorizations with respect to rail carriers under section 5 and reverting to the restrictive aims and policies of the antitrust laws; and that, since (so they assert) the 1940 amendments, by which the matter of consolidation of rail, motor, and water carriers were all covered by section 5, practically adopted the provisions of the Motor Carrier Act governing motor carrier consolidations, it follows that Congress intended that the consolidations of all carriers subject to the Act should be governed by the standards and criteria, reverting to the restrictive policies of the antitrust laws.

The principal flaw in the above argument of appellants is that they are mistaken in their belief that Congress, when enacting the Motor Carrier Act of 1935 and providing for motor carrier consolidations did so by provisions specially intended for motor carriers; for the provisions in question contained in that Act follow closely the provisions

of section 5 as amended by Emergency Transportation Act, 1933, except the provisions then contained in that section but eliminated in 1940 for a plan of consolidation of the railroads. It is apparent, therefore, that those provisions in section 5, as amended in 1940, which the appellants consider were taken from the Motor Carrier Act, 1935, should be considered rather as provisions which were already in section 5, as that section was amended by Emergency Transportation Act, 1933, and which, as stated in *Texas v. United States*, *supra*, strengthened and carried forward the policy of Transportation Act, 1920, together with its standards and criteria governing the consolidations of carriers.

4. The appellants' contention that the Commission is authorized to approve consolidations only after giving due consideration and weight to the provisions and policies of the antitrust laws is not substantially different, in the application made of it, from their contentions as to the specific things required of the Commission by the antitrust laws, or from the contention of protestants in the Commission proceeding "that it was the intention of Congress, in enacting section 5, that (the Commission) approve only such transactions as would not result in an 'unreasonable' restraint of competition within the meaning of the antitrust laws." One marked illustration of this is the special reliance the appellants place on the Sherman Act for support of their contentions.

The appellants' brief refers to the Sherman Act by name and bases upon it that part of their argument intended to show that, with the enactment of the 1940 amendments to the Act, Congress restored the original section 5 policy with respect to competition which it is asserted was later embodied in the Sherman Act (Br. 18-19). Further pursuing this argument, the brief contends that section 5 should be construed as requiring the Commission to be guided by, and to give effect to, the policy and provisions of that Act which procedure, it is said, might well be regarded as a more effective means of ensuring compliance therewith than the enforcement remedies available to the Department of Justice, since section 5 requires prior administrative approval before a consolidation can be effected. This argument leaves no "room" for escape from the conclusion that it is the appellants' position in practical effect that the Commission is required to administer and apply the prohibitions of the Sherman Act.

However, the Sherman Act is not placed with the Commission for administering but is expressly committed to the courts, and while, as in effect suggested by the lower court, the appellants' description of that Act as prohibiting "unreasonable" restraints of competition carries the import that only those restraints which may, in light of the surrounding circumstances, be held to be unreasonable, are the restraints in fact for-

bidden, nevertheless it is, of course, the fact that what would be unreasonable restraint under the Sherman Act, whose single purpose is directed to the preservation of competitive forces and which expresses that purpose in terms of prohibition carrying criminal penalties, cannot be regarded as affording a standard of the extent to which the forces of competition were intended to be preserved under an Act (the I. C. Act) which, in order to advance its own aims and purposes, expressly provides for the consolidation of carriers into a single company and expressly relieves the carriers concerned from the said Sherman Act and other Acts so far as necessary to avail themselves of the authorization.

5. The appellants' contentions, whether those urging that the Commission is required to give weight to the policies and provisions of the anti-trust laws or those in fact urging that it is governed by those laws, are in conflict with the language of the Act and the decisions applying it from time of enactment. The Congress with full realization, it must be assumed, that the legislation was not in line with the prohibitions of the antitrust laws, nevertheless expressly provided in section 5 for authorization of consolidations of carriers subject to regulation under the Interstate Commerce Act and, at the same time removed the obstacle presented by said prohibitions by adding a provision expressly

granting relief therefrom. *N. Y. Cent. Securities Corp. v. United States*, 287 U. S. 12, 25-26. If the provision for such relief had not been included, it still would seem that it would have had to be implied from the power and duty placed with the Commission and with the provision expressly included, there is no room for the appellants' argument that the Commission is required to give weight to the policies and provisions of the antitrust laws or their in fact argument that it is expected to actually administer those laws in passing upon transactions under section 5.

### ARGUMENT

#### **I. The appellants' allegation that the lower court erred in its holdings with respect to the elimination of all issues relating to Arrow carrier is without substance**

As above pointed out, the bill filed in the lower court contained two allegations raising issues which related only to the inclusion of Arrow in the Commission's authorization of the consolidation of motor carriers and issuance of securities and which the court held (R. 85) had been eliminated from the case by the Commission's modifying order of June 8, 1942, excluding Arrow from its said authorization. These allegations were to the effect—

- (1) that the Commission had erred in not finding (under sec. 5 (2) (b) of the Act) that the consolidation would enable the railroads with which the applicant

would be affiliated to use its motor service to public advantage and would not unduly restrain competition (para. (e)), and

(2) that it had erred in failing to find that the stock interest which would be had by Kuhn Loeb & Co., bankers for two of the largest railroads in the territory involved, would not be in the public interest (para. (f)).

In the Commission proceeding the only contentions made as to railroad affiliation were advanced in connection with the inclusion of Arrow in the proposed consolidation and these contentions were predicated on the fact that the acquisition of Arrow's stock in exchange for stock of Associated Transport was contracted for with a company owned by Kuhn Loeb & Company, which firm had for many years been bankers for the Baltimore & Ohio and the Pennsylvania railroads. The Commission in its report (R. 35-37) dealt at some length with these contentions and by its discussion, there and at other places in the report, it is shown that the proposed consolidation was sponsored not by Kuhn Loeb & Company, as contended by the protestants, but by the individuals owning the stock of, and actually managing, the carriers involved; that there had been a previous proposed unification including the carriers here involved and about 20 others which the Commission had declined to approve in what is known as the *Transport Company case*, 36 M. C. C. 61;

that it was through its subsidiary, the Transport Company, that Kuhn Loeb & Company had first gotten and continued to hold, its option to purchase the stock of Arrow (R. 12); that, under the contract for the exchange of the optioned stock of Arrow for stock of Associated Transport, the stock of the latter which Kuhn Loeb & Company would indirectly acquire, if the proposed consolidation were consummated, would amount to 13 and 9.53 percent, respectively, of the preferred and common stock of the said Associated Transport; that Kuhn Loeb & Company would have only one of nine directors on the board of Associated Transport and its inexperience in the motor carrier industry, contrasted with the experience of the other directors, made it improbable that it would have more than a nominal voice in the formulation of operating policies; and that the fact that no railroad had intervened in opposition to the application was not, as argued by the protestants, a circumstance which could be properly considered as supporting their contentions that Associated Transport would be railroad affiliated. In conclusion, the Commission said (R. 37):

\* \* \* The circumstances present here are not such as to make it reasonable to believe that the affairs of applicant would be managed in the interest of any railroad, and we conclude that applicant is not and would not be affiliated with a railroad as a result of consummation of these transac-

tions as proposed. Compare Cleveland, Columbus & Cin. Highway, Inc.—Purchase—Reo, 36 M. C. C. 325, and National Freight Lines, Inc.—Purchase—Mason, 15 M. C. C. 687.

That the Commission's above conclusion was both rational and sound seems inescapable. However, entirely aside from this, the situation which was in fact before the lower court was that resulting from the failure of the Transport Company to exercise its option to purchase the capital stock of Arrow and its consequent failure to deliver that stock to Associated Transport and to receive in exchange the shares of stock of the latter company agreed upon. As a result of that failure, Associated Transport applied to, and obtained from, the Commission an order conforming the Commission's authorization to the fact that Arrow would not be included in the transactions authorized and, since the order was entered after the court suit had been instituted and after the Commission had filed its answer, the Commission filed an amendment to its answer (R. 65), advising the court of the modification of the authorization and attaching thereto a certified copy of the order of modification (R. 70). Referring to the above, the lower court stated and held in its opinion (R. 85):

After the suit was brought and the answer of the Commission was filed it was amended to allege, what is now undisputed,

that because of the failure to carry through negotiations for the acquisition of the stock of the Arrow Carrier Corporation the applicant petitioned the Commission for a modification of its order to exclude that carrier from the merger authorized and that was done by order entered June 8, 1942. All phases of this controversy which resulted from the inclusion of Arrow in the authorized consolidation are, therefore, eliminated and we will proceed as though Arrow had never been a party.

In their assignments of error and in their brief, the appellants allege (Br. 59-62)<sup>17</sup> that the lower court erred in the above holding and in failing to pass on the important public questions arising under the proviso of Section 5 (2) (b) of the Act, which latter reads as follows:

*Provided*, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the

<sup>17</sup> Since the briefs of the appellant, McLean, and the appellant, American Farm Bureau Federation, adopt the brief of the Secretary of Agriculture except for certain additional argument, the said brief of the Secretary of Agriculture will be referred to as the appellants' brief and, whenever the other briefs are referred to, that will be done by special designation.

transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

For "the important public questions arising under" the above, the appellants make reference (Br. 62) to the questions dealt with in Section III-B of their brief, but, from a reading of that section of their brief, it is not clear why the contentions there made could not have been fully considered by the lower court from the standpoint of the Commission's authorization as it in fact existed, that is, without assuming that it still included Arrow in the transactions which Associated Transport was authorized to consummate. The most that was eliminated from the case was the court's review of the Commission's conclusions that (with Arrow included in the transaction) "the circumstances present here are not such as to make it reasonable to believe that the affairs of applicant would be managed in the interest of any railroad and we conclude that applicant is not and would not be affiliated with a railroad as a result," etc. Whatever the public importance of the question as to what constitutes railroad affiliation, it will be seen that the Commission's conclusions cover only the ground of the facts and circumstances before it.

In support of their contention that the lower court should have proceeded to review the Com-

mission's conclusions, although not involved in the authorization as modified by the Commission, the appellants say (Br. 61):

The courts have consistently held that where questions of public interest are concerned, and where the interpretation of a statute by a commission or similar body under conditions which may be repeated is challenged, the court's jurisdiction continues for the purpose of considering these questions for the guidance of the Commission in the same or similar proceedings.

The above seems to state a rule to the effect that whenever there is challenged in court a determination by the Commission of public interest and involving interpretation of a statute under conditions which may be repeated, the court's jurisdiction continues for purpose of guidance of the Commission in the same or similar proceedings, despite subsequent happenings or action of the Commission removing the question determined from any controversy before the Court. It will be noted that the decisions cited by the appellants as authority are not many, and it seems apparent that those named do not support the broad application given them but that each depends upon circumstances quite different from those in the instant case. Cf. *United States et al. v. Anchor Coal Co. et al.*, 279 U. S. 812,<sup>18</sup> and cases

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<sup>18</sup> The Commission decision in this case involved interpretation of the statute and was of public importance (25 Fed. (2d) 462, 464, 469).

therein cited. Here the removal of the issues from the controversy before the Court was because of express order of the Commission modifying and cutting down the previous authorization granted. The application of Associated Transport (R. 67) and the recitals in the Commission's order (R. 70) show that there was no likelihood that Arrow would be restored to its former place in the Commission's authorization, and, so far as future similar situations are concerned, any value that would attach to court review of the Commission's conclusion that the applicant, Associated Transport, was not railroad affiliated, would seem to be minor except as to situations of very close similarity of facts and circumstances. Indeed, it is not at all clear that the above quoted statement of the appellants with respect to Commission decisions involving interpretation of the statute has any application to the present case for the reason that it seems likely at least that the question of railroad affiliation is for administrative determination. It appears to be committed to the Commission (see 5 (6) and (7); Cf. *Rochester Tel. Corp. v. United States*, 307 U. S. 125; *Shields v. Utah-Idaho Ry.*, 305 U. S. 177) and it is a question depending particularly upon the facts and circumstances involved.

It should be mentioned that the appellants rely to some extent on the fact that, even though Kuhn

Loeb & Company acquired no stock of Associated Transport through exchange of the stock of Arrow, it still was indirect owner of 9,000 shares of the common stock of Associated Transport which was issued to it for certain engineering and accounting data which had been used in the earlier *Transport Co. Case, supra*, and which Associated Transport had need for in the later case (Br. 8, 60). In connection with this ownership of stock the appellants state (Br. 61):

\* \* \* If the motor carriers here involved are merged into one company, as proposed, Kuhn Loeb & Company can proceed, under the Commission's ruling that it is not affiliated with any railroad, to increase its stock holdings in Associated Transport, Inc., to full control without Commission interference.

Aside from the soundness of the above proposition generally, it will have been seen that the Commission did not hold that Kuhn Loeb & Company was not affiliated with any railroad.

In the brief of the American Farm Bureau an additional argument is made to support the contention that the lower court should have passed upon the issues arising from the inclusion of Arrow in the original authorization although Arrow was excluded from the authorization by the Commission's modifying order. Referring to the lower court's statement that, by reason of the Commission's modifying order all issues arising

from the fact that Arrow was included in the original authorization were eliminated from the controversy, the brief of the said Farm Bureau reads (pp. 16-17):

\* \* \* However, the time allowed by the Commission for carrying the consolidation into effect had not then expired. The Commission by its original order and by the supplemental order had indicated that it would approve the consolidation and merger either with or without the inclusion of Arrow Carrier Corporation.

The above statement does not accurately reflect either the terms or the effect of the orders referred to. The orders should, of course, be read in connection with the Commission's report, and the Commission had said (R. 12) that, if the parties were unable to include Arrow the consolidation might, nevertheless, be consummated in other respects without further authority. Accordingly, the original order not only indicated that the Commission would authorize, but actually authorized the unification and consolidation either with or without the inclusion of Arrow. But the Commission's subsequent order cannot be logically read as embodying the statement in the report just referred to, that is to say, the said subsequent order, expressly excluding Arrow from the unification and consolidation authorized, cannot be read either as authorizing or as indicating that the Commission would authorize the transactions

whether or not Arrow was included. The order was, of course, made on application of Associated Transport but neither the application nor the recitals in the order indicate any likelihood even that the Commission would ever be asked to restore Arrow in its authorization. On the contrary the application and the said recitals show both that the agreement for acquisition of Arrow's stock had been cancelled and that Associated Transport no longer either intended or desired to include Arrow in the unification and consolidation. And, in any event, it is manifest that the lower court could not speculate either as to the possibility of another application being made to the Commission or as to what action the Commission would take in the event such application were made. The order of authorization before it excluded Arrow and it is plain that the court did not err in failing to treat it as an order different from what it was.

Possibly the appellant Farm Bureau, in stating that the order indicated that the Commission would approve the consolidation either with or without the inclusion of Arrow had reference to the report instead of the order and to the fact that the report's findings continued as formerly to contemplate the inclusion of Arrow, but it is, of course, settled that a report's findings cannot be subjected to suit to enjoin and set aside in the absence of an order giving effect thereto. *United*

*States v. Atlanta, B. & C. R. Co.*, 282 U. S. 522, 528.

**II. The Commission, in approving the consolidation, proceeded under a correct construction of Section 5 of the Act**

1. The Commission was correct in its view that the provision of Section 5, which accords relief from the Antitrust Acts with respect to consolidations approved by it, may not be read as intending that only such consolidations be approved as are not forbidden by the said Acts

The appellants' claim of invalidity of the Commission's orders authorizing the unifications and consolidation of carriers here involved rests, it is clear, for the most part on the legal contention that the Commission acted under a misconception of section 5 of the Interstate Commerce Act and particularly its provisions in paragraph (11) with respect to relief from the antitrust laws (R. 14, 33-36). While the appellants' allegations include allegations of inadequacy of findings and supporting evidence, these, as will be later shown, do not so much assert such inadequacy in respect of the criteria recognized by the Commission as governing under the Interstate Commerce Act as they allege lack of the findings and evidence which the appellants insist were necessary; that is, the findings and evidence necessary to establish the consolidation as one permissible under the appellants' view that section 5 required the Commission to apply and give effect to the antitrust laws (R. 33).

Although the appellants rely principally on their contention that the Commission acted under a misconception of section 5, it should be noted that their brief contains little, if any, detailed discussion of the terms of the section. In fact, the argument in the brief intended to show that section 5 required the Commission to apply and give effect to the antitrust laws starts out with an extensive discussion (Br. 15-33) of the legislative history of the section and its amendments and of the antitrust laws without either pointing to any language in the section as it now stands indicating such a requirement or pointing out in just what respects its language was considered to be ambiguous.

As has been shown in the preliminary statement, the Commission is empowered under section 5 (2) (b) of the Interstate Commerce Act to approve unifications and consolidations of carriers subject to its jurisdiction upon findings that "the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest"; and its said approval operates to relieve the carriers participating in a consolidation from the antitrust laws and all other restraints or prohibitions of law, as provided in section 5 (11) of the Act, which reads in part as follows:

The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or

resulting from any transaction approved by the Commission thereunder, shall have full power \* \* \* to carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under State authority; and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section *shall be and they are hereby relieved from the operation of the anti-trust laws*, and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved \* \* \* [Emphasis supplied.]

The appellants' contention that the Commission, in authorizing the consolidation of motor carriers involved, proceeded under an erroneous conception of section 5, is made in various ways, but, as will be later shown, the several arguments urged by the appellants all appear to rest basically on the proposition that the Commission had erred in ruling against the contention, advanced in the proceeding, that the authority given to it to approve consolidations extended only to such consolidations as would not result in an "unreasonable" restraint of competition within the meaning of the antitrust laws. In the bill of

complaint herein (R. 1, 7), similarly as in the petition for rehearing (R. 475, 481) filed with the Commission, pages 17 and 18 of the Commission's report are referred to as showing the particulars in which the Commission was considered to have misconstrued the Act; and the appellants' brief also refers to the same portion of the Commission's report in its statement (Br. 33-34) that—

The Commission construed Paragraph 11 of Section 5 as placing wholly within its hands, regardless of and unfettered by the provisions and policies embodied in the antitrust laws, the power to grant or deny mergers of motor carriers. The Commission's claim to such power is stated as follows (R. 22):

"In our opinion, the Congress intended to place wholly within our judgment the granting or denying of authority for these transactions under Section 5."

At the said pages of its report (R. 22-23) referred to the Commission expressed its disagreement with the argument of the Antitrust Division that it was the intention of Congress, in enacting section 5, that it approve only such transactions as would not result in an "unreasonable" restraint of competition within the meaning of the antitrust laws, regardless of benefits that might result or the adequacy of remaining competition. The Commission said that—

Under such an interpretation, the provisions of paragraph (11) of section 5 would be largely meaningless.

and it further said that—

\* \* \* In our opinion the Congress intended to place wholly within our judgment the granting or denying of authority for these transactions under section 5. The specific reference to the antitrust laws only emphasizes the Congressional intent that we should be empowered to approve transactions which otherwise would be violative of the antitrust laws, if we are convinced that the public interest would thus be best served. Stated differently, section 5 authorizes us to permit unifications which would, except for such approval, result in restraining competition contrary to the antitrust laws, where the disadvantages of such restraint are overcome by other advantages in the public interest, such as direct betterment in the public service of the carriers or indirect betterment through stabilization of the industry. Determination of the larger question as to whether the proposed unification would be consistent with the public interest involves consideration not only of the competition that would be eliminated, but also of the competition that would remain and advantages which would result from the unification. \* \* \*

In short, the Commission was unable to accept a construction of section 5, whereunder para-

graph (11) thereof would have to be taken, not as a provision according relief from the antitrust laws with respect to consolidations approved by it, but as a provision limiting its approvals to such consolidations as are not forbidden by those laws. The Commission gave to the section its normal construction, that is, that it empowered it to approve such consolidations as it determined met the statutory standard of consolidations consistent with the public interest. It considered that the extent of any restraint of competition that might result was an underlying element entering into such determination, but it did not consider that section 5 had adopted, as the ultimate criterion (i. e., the standard) of permissible consolidations, such consolidations as would not result in an "unreasonable" restraint of competition within the sense and meaning of those prohibiting laws.

Accordingly, the Commission, proceeding in the view that the standard of a permissible consolidation set up by section 5 of the Interstate Commerce Act was one which would be consistent with the public interest as judged by the criteria furnished by that Act, gave such consideration to the element of restraint of competition as was required to properly weigh, in the light of such criteria, any detriment to the public interest that might result therefrom against the benefits and advantages derived from the consolidation. As

shown in the Commission's report (R. 22-25), a considerably duplication existed in the regular routes operated over by the 8 carriers included in the proposed consolidation. The carriers, McCarthy and Consolidated, were substantially competitive throughout Massachusetts, Connecticut, and Rhode Island, although Consolidated was the only carrier involved which operated between New York City and points in the New England States. Consolidated and Moran were competitive between the principal points in New York State, the routes of Moran, however, being considerably more extensive than those of Consolidated within New York State and also extending to Cleveland, Ohio, and points in northern Pennsylvania (R. 27-28). As for the Middle Atlantic region other than New York, and the Southern region, the routes of those of the carriers operating therein also involved considerable "overlaps", although less so than those of the carriers operating in New York and the New England States (R. 27, 29).

The amount of duplicating highway mileage of the carriers involved in the proposed consolidation did not constitute an entirely accurate measure of the actual competition existing between them, this because of differences in traffic handled and restrictions in their respective operating authorities (R. 22, 28, 29). Nevertheless, the competition that existed between certain of the carriers involved was undoubtedly substantial, and

consummation of the proposed consolidation would eliminate such competition. But it is plain that this fact could not be considered as controlling in view of the record showing of the abundance of competition that would remain (R. 22-32).<sup>19</sup> Speaking of the tabulated evidence, the Commission found that "there would remain ample competitive motor carrier service throughout the territory involved"; and it further found that "in addition, all the principal points and many others are served by one or more rail carriers"; that competition is also afforded by motor vehicle contract carriers, by carloading and forwarding companies and frequently by combinations of two or more carriers through interchange (R. 32).

Judged, however, by the argument advanced before the Commission as well as in their briefs filed here (R. 44, 45), the appellants' first concern is not because of the direct elimination of competition between the carriers involved in the consolidation but because of the possible indirect effect of the consolidation upon the remaining operators, their objections in this respect being in part that the "size" and financial strength of the resulting carrier would enable it to dominate the other carriers and in part seeming to be based

<sup>19</sup> R. 707, 734; Ex. 3, R. 1381; Ex. 6, R. 1394; Witness Howell, R. 965-982; Ex. 4, R. 1389; Ex. 16, R. 1475; Ex. 19, R. 1484; Ex. 20, R. 1489.

on the premise that the Commission was without authority to approve the consolidation, because as to certain of its possible operations, particularly those between extreme termini, Associated Transport would have a monopoly of the service in the sense that it would be the only single motor carrier authorized to conduct the operations. In the Commission proceeding this latter contention was urged, using as particularly illustrative the possible operations between Boston and New Orleans; and, in answering it, the Commission said (R. 33):

\* \* \* The evidence shows that service between these extreme termini (Boston and New Orleans) is not contemplated by applicant, nor would it be economically feasible under present conditions and rate structures, particularly because of the availability of substantially cheaper water transportation. However, assuming such service were to be rendered by applicant, the mere fact that the consolidation would result in making available to the public a new service, different from any presently existing, may not properly be objected to on the ground that applicant would have a "monopoly" of such service. If such contention were valid we would be required to disapprove many applications, both under section 5 and section 207, for extension of operations to points not already enjoying similar service, on the ground that such an applicant, being the only operator, would have a monopoly of such service.

Here, of course, the plaintiff's objection runs flatly counter to the criterion of "the public interest" which the Commission must observe in passing upon proposed unifications, or consolidations, and the criterion of "the public convenience and necessity" which it must observe in passing upon proposed extensions of, or proposed new, operations. It is a matter of common knowledge that competitive conditions in the transportation field have forced and are continuing to force on the railroads countrywide abandonments of so-called "weak" branch and other lines, and that the intense competition between the motor carriers themselves has created unsound conditions in the industry. It was the pressure of these very conditions which induced Congress to enact the Motor Carrier Act, 1935.<sup>20</sup> Where the traffic furnished by communities served by a line of railroad does not warrant its continued operation, the Commission has no choice other than to permit of its abandonment: *Colorado v. United States*, 271 U. S. 153. Such abandonments generally leave more than one motor carrier operating but they may leave a community without service at all<sup>21</sup> and, of course, there are still many com-

<sup>20</sup> The conditions resulting from the intense competition in the transportation field had been the occasion for study by Congress under various proposed bills for ten years or more.

<sup>21</sup> The competition that causes abandonment of a line need not be direct competition of motor carriers with the line. A greatly contributing cause is the effect of motor competition

munities without direct or any adequate form of transportation, to which motor carriers are from time to time proposing to extend their service. Plainly, in the case of a carrier applying to the Commission for authority to undertake service to such a community, it would not be in the interest of the community to be deprived of the service in order that it be protected from the carrier's having a monopoly in the rendering thereof.<sup>22</sup>

Moreover, the assumption that Associated Transport would, as to certain of its long-haul operations, have a monopoly of the transportation service, does not square with the facts. The Commission, referring to the Boston to New Orleans operations, in effect stated that the com-

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on railroad revenue generally which does not long permit of continued operation of unprofitable lines either for further trial or other reason. A frequent immediate cause of abandonment is the falling off of traffic from the industry for which a line was chiefly built, although there will generally have grown up in reliance on its service other small industry, farming, or other permanent settlement.

<sup>22</sup> It should be noted that the decision in *Texas & Pac. Ry. v. Gulf, etc., Ry.*, 270 U. S. 266, 277 (to be later discussed), shows plainly that the Act considers that the public interest may be promoted by protecting a carrier in its monopoly in rendering service; for there the Texas & Pacific had such a monopoly (e. g., its "spur" extending into the industrial section of Dallas) and it was held that, before the Santa Fe could undertake competitive service, it must obtain a certificate of public convenience and necessity, the Court saying "that competition between carriers may result in harm to the public as well as benefit; and that when a railroad inflicts injury on its rival, it may be the public which ultimately bears the loss."

petition was such (particularly that in the form of the cheaper water transportation) as to render the operations economically impractical under present conditions and rate structure (R. 33). And, in its findings in respect of competition other than that afforded by motor carriers, it said, among other things, that all of the principal points and many others are served by one or more rail carriers. (R. 32).<sup>23</sup>

With respect to the contention, made before the Commission as well as here (R. 44-46) that the consolidated company would, because of its size and revenues, be able to dominate and suppress the competition of the other motor carriers operating in the territory, the Commission referred to a number of other large motor carrier systems operating in the Middle Atlantic and Central States (mentioning by name the Keeshin System, Interstate Motor Freight System and United States Truck Line System) and said that experience with them had not indicated that such result, or anything approaching a monopoly, would be likely to follow;<sup>24</sup> that, considering the

<sup>23</sup> Ex. 18, R. 1481. Witness Mead, R. 1145 et seq.; Witness Arbour, rail and water competition, R. 707-709; Witness Faivre, R. 831; Witness Vayo, R. 888.

<sup>24</sup> The record of testimony contains frequent mention and discussion of the operations of the systems named and other large systems (R. 597-598; 1152-55; 1165-67; 704-706; 812; 857-858; 979; 1056; 1154; 661-66), including testimony to the effect that, since such large systems, established in east-west operations, had been successful and beneficial to shippers, the proposed consolidation of north-south operations could

great number of motor carriers operating,<sup>25</sup> the small amount of capital required to enter the business, the advantages which the smaller motor carriers have through their more intimate relations with shippers and ability to render a personalized service,<sup>26</sup> it seemed that monopoly was little to be feared at this stage of the development of the trucking industry; that, as to the ability of the consolidated company to obtain a greater portion of the available traffic than the present individual carriers now handle, the testimony of shipper representatives showed that there was a tendency among shippers to divide their traffic<sup>27</sup> and that, in the opinion of the general manager of one of the intervening motor carrier competitors of Horton and Barnwell, his company would be in a better position from the solicitation standpoint if those carriers were

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be expected to be equally successful and beneficial (R. 890-891; 858-860; 596-597; 513; 922). As to the proposed Associated Transport consolidation, there was a very full record of testimony of shippers and shipper representatives, as well as operating men, as to the benefits that would result, and also its effect on the competitive situation. There was much opinion testimony (with reasons given) that monopoly would not, and, indeed, that it could not, result from the consolidation (R. 898; 822; 904; 664-670; 907).

<sup>25</sup> Witness Tupper, R. 898-899; Stevens, R. 904; Rettino, R. 920; Kirtley, R. 927; Glymp, R. 940; Hooey, R. 811.

<sup>26</sup> Witness Horton, R. 567; Altwater, R. 859; Howell, R. 970-975.

<sup>27</sup> Witness Faivre, R. 826; Greer, R. 838; Evans, R. 882; Tupper, R. 893; Davis, R. 912; Glymp, R. 940.

merged (R. 34).<sup>28</sup> The Commission also discussed, and showed to be based on faulty premises, argument advanced that the combined volume of business of the constituent carriers would give the consolidated company a bargaining power with connecting motor carriers that would enable it to demand a disproportionate amount of interchange traffic.<sup>29</sup> Such bargaining power, the Commission said, "would necessarily have to be spread among numerous connecting lines and in the aggregate would be no more, and probably would be less, than that of competing lines."<sup>30</sup> The applicant, it further said, "would have little to gain and much to lose by adopting an unreasonable policy of interchange" (R. 34).

The Commission recognized, of course, that Associated Transport would haul unrouted freight to destination when possible to do so; that is, that it would not short-haul itself, but, in this connection it said (R. 34):

However, the traffic it might divert from connecting carriers probably would be equalized, to a large degree at least, by traffic which would be diverted from it to other lines. To illustrate, a carrier oper-

<sup>28</sup> R. 1280.

<sup>29</sup> Witness Arbour, R. 695; Hooey, R. 812; Faivre, R. 822; Barnwell, R. 858; Clay, R. 634; Brock, R. 688-699.

<sup>30</sup> Akers, R. 1267-1268, 1278-1281; Smith, R. 1243, 1246-1247; Lewis, R. 1260-1263; Dempsey, R. 1238-1240; Barnwell, R. 958-959; Horton, R. 543; Clay, R. 634; Ackerman, R. 763.

ating between Boston and New York and presently interchanging with Barnwell at the latter point for southern destinations, after consummation of the proposed consolidation, would be likely to deliver traffic controlled by it to some independent line rather than to applicant, which would be a competitor of such delivering carrier.<sup>31</sup>

The above weighing by the Commission of the contentions of the protestants, it will be observed, was a weighing from the standpoint of criteria supplied by the Interstate Commerce Act and not from the standpoint of what would, or would not, constitute restraint of competition forbidden by the antitrust acts. The Commission was of the view that there was no reason to apprehend that Associated Transport would be able to dominate the field, or, in fact, secure a disproportionate share of the traffic, and it further, in effect, stated that, if it was to consider that the size alone<sup>32</sup> of a motor carrier that would result from

<sup>31</sup> Witness Dempsey, R. 1238-1239, 1236-1237. And see testimony to the effect that there would be no lessening of interchange except where the consolidation rendered it no longer necessary. Horton, R. 524; Arbour, R. 695; Ackerman, R. 763; Barnwell, R. 958-959; Dempsey, R. 1221, 1224.

<sup>32</sup> In the earlier *Transport Case*, 36 I. C. C. 61, involving the unification of 29 motor carriers, the Commission's decision, denying the application, was based on several grounds, certain of which were attributable to, or related to, size, but much in addition to size entered into the decision. In the instant report (p. 46) the Commission said: "The carriers involved in the prior case, but not in the present one, alone

a consolidation was, under the Interstate Commerce Act, a sufficient ground for denial of an application, "such a policy would tend to freeze the motor-carrier industry at its present level," and that—

\* \* \* There are many thousands of motor carriers of property subject to our jurisdiction. Many of these are very small, and small motor carriers are necessary and have a definite place in the industry. On the other hand, it would seem that larger motor-carrier systems, comparable in size and strength with units of competing forms of transportation, should also have their place in the industry.<sup>33</sup> The legislative history of section 5 indicates a clear Congressional intent to encourage unifications, particularly of railroads. In view of the national transportation policy, as declared in the act, it can not be supposed that Congress intended that the motor-carrier industry, a coordinate and competing form of transportation, should not also be permitted to grow through consolidations, or that the mere size of the consolidated company should, of itself, be sufficient to warrant denial. \* \* \* (R. 35).<sup>34</sup>

would furnish substantial competition to applicant throughout much of the territory involved" (R. 44).

<sup>33</sup> Witness Vayo, R. 889-890; Altwater, R. 859-860; Howell, 975; Rettino, R. 922.

<sup>34</sup> Earlier the Commission had said (R. 18) that "among other things, the act declares it to be the national transportation policy to promote safe, adequate, economical, and effi-

As has been above shown, the Commission had gone very fully into the considerations other than that of "mere size" alone and was very firmly of the view that the advantages of the consolidation greatly outweighed the disadvantages urged; and further in connection with the matter of size, it must not be overlooked that the highway mileage operated over by a motor carrier does not reflect its "size" in the same terms of measurement as does the mileage of privately owned right-of-way operated by a railroad. The appellants center attention largely on the long-haul operations which will be facilitated by the consolidation, but the business of the consolidated operations will continue to be spread between short-haul, medium-haul and long-haul operations (R. 516, 523), and while, with the improved facilities and faster service, the long haul proportion of the traffic may be definitely expected to increase, the proposed consolidation was quite as much for the purpose of improving the short-haul as the long-haul service rendered the public (R. 714, 713). In any event the showing of competitive motor carrier service included, not alone very many class 1 carriers, but also many having very extensive territorial operating authority or performing long-haul operations through interchange arrangements<sup>35</sup>; and,

cient service." The evidence showed that each of these purposes would be served by the consolidation.

<sup>35</sup> R. 24, 26, 29, 30, 31; Witness Hester, R. 789, 795; Hooey, R. 805-806, 808-809; Faivre, R. 816-818; Akers, R. 1267, 1281.

throughout, the record is replete with evidence and testimony of the rail competition<sup>36</sup> that will be met with and also that of the earloading companies, the water and contract carriers and other forms of competitive transportation.<sup>37</sup>

In short, the record contains ample evidence on every angle of the situation and, as stated by the Commission, the question as to whether a proposed consolidation is consistent with the public interest is committed to its judgment as a matter governed by criteria furnished by the Interstate Commerce Act (*Texas v. United States*, 292 U. S. 522) and not by the Antitrust Acts. This construction given by the Commission to the Act which it administers (Cf. *N. Y. Central Securities Corp. v. United States*, 287 U. S. 12, 24) is not alone its only normal and workable construction and one long administratively applied, but is also a "reading" required by the plain language of the section involved (*idem*, 26), and that being the case, the appellants resort to extraneous considerations to find warrant for a different construction of the language falls

<sup>36</sup> Ex. 18, R. 1481. In connection with this exhibit, Witness Mead said (R. 1146) in effect that a railroad can, through interchange of cars (or transfer of the lading) reach all railroad points in the country. Shipper witnesses as to rail competition include Hester, R. 789, 799; Faivre, R. 830; Evans, R. 880; Vayo, R. 888; Tupper, R. 893; Kirtley, R. 926.

<sup>37</sup> Witness Mead, R. 1139, 1144, 1146, 1160; Reicher, R. 1048; Altwater, R. 857; Howell, R. 967-968, 970, 974; Tupper, R. 897, 899; Korinek, R. 884; Vayo, R. 888; Lawson, R. 643; Arbour, R. 707-708.

squarely within the familiar rule that "Such aids are only admissible to solve doubt and not to create it." *Wisconsin R. R. Comm. v. C. B. & Q. R. R. Co.*, 257 U. S. 563, 589.

2. The measure of what constitutes adequate transportation service for the public is not to be gathered from the Antitrust Acts but from the criterion of the "public interest" supplied by the Interstate Commerce Act, which "has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities"

The appellants rely greatly on subparagraph (c) of paragraph (2) of section 5 which provides that the Commission, in passing upon a consolidation, or merger, shall give weight to the consideration, *inter alia*, of the effect thereof "upon adequate transportation service to the public." Predicated upon this provision, the appellants contend that the Commission is authorized to approve consolidations that substantially lessen competition only as necessary to maintain adequate transportation service for the public and only if it finds that *existing* service is inadequate (Br. 38-46).<sup>35</sup> Other than that they consider that the Commission's different conception of the provision is in conflict with the antitrust laws (of which no mention is made in the provision), the reasons urged by the appellants in support of their contention seem to center and depend on a restricted meaning which they attribute to the

<sup>35</sup> McLean Brief, p. 6; Farm Bureau Brief, pp. 9, 11-14.

words "adequate transportation service" contained in the subparagraph in question.

In the Commission proceeding it was shown and found that the consolidation would, in addition to enabling economies and greater efficiency, enable, or facilitate, a through-trailer service which would make available to shippers a transportation service, shortened as to time in transit by many hours, and that it would enable greatly improved terminal service in cities and towns and safer road service. These findings, however, of direct benefits to the public expected to result from the consolidation, the appellants characterize as findings of "anticipated" or "promised" improvements in service<sup>30</sup> (Br. 37; McLean Br. 6) and they assert that, in any event, such findings did not establish what they insist was a prerequisite to approval of the consolidation, namely, that the existing service available to the public was "clearly inadequate" (Br. 38), and shown to be such by existing facts. In this way the appellants state (Br. 38-39) the Commission's judgments—

are safeguarded in that the Commission is dealing with present existing facts which

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<sup>30</sup> Whatever may be the rule under the antitrust laws in the respect of confining consideration to existing conditions, the Commission's functions under the I. C. Act are largely legislative in nature and, therefore, in any situation calling for it, the Commission is expected to apply its judgment as to future results and must do so in order to arrive at sound conclusions as to the public interest. Cf. *Ecker v. Western Pacific Ry Co.* (Railroad reorganization), 318 U. S. 448.

can be examined. Evidence can be taken as to who is suffering from lack of adequate service and why. Economies in operation may be approved, but not at a price which involves undue restraint of competition. Remedies which involve some restraint of competition can be limited to curing the specific evils found. In short, public policy looks to private initiative in a competitive system to bring about future betterments of service.

The above, it is plain, can only mean that it is the appellants' view that the adequate transportation which the statute seeks to maintain for the public is a transportation service of qualified adequacy; for, if it is contemplated by the statute that the public is to be denied future betterments and improvements in service unless the existing service available to it is so "clearly inadequate" as described by the appellants, it could not be the statute's purpose to maintain for the public an adequate transportation service measuring up to usual standards of adequacy. However, the appellants' apparent view, that the Congress in speaking of adequate service for the public, had in mind such qualified adequacy is disputed in many ways.

Following the important additions and amendments made to the Interstate Commerce Act by Transportation Act, 1920, there was great need for construction of the new provisions and recon-

ciliation of the provisions of the Act as a whole and, in the relatively few decisions of this Court by which this was done, it was early seen and determined that the 1920 Act made a definite departure from the earlier legislation; that the Act as theretofore framed was primarily designed to prevent unjust discrimination by the carriers and the charging of excessive rates, whereas—

The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. *Wisconsin R. R. Comm. v. C. B. & Q. R. R. Co.*, 257 U. S. 563, 585.

In subsequent decisions of the Court, of the lower courts, and of the Commission, this affirmative duty placed on the Commission was consistently referred to as the policy (or purpose) of the Transportation Act, 1920, to ensure an adequate transportation service for the public; as such it became widely known, and the "adequate transportation service" therein incorporated is undoubtedly the same as that referred to in the provision of section 5 (2) (c),<sup>10</sup> directing the

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<sup>10</sup> Subparagraph (c) was added along with other amendments to section 5 made in 1940; that is to say, it was added at a time when the phrase "adequate transportation service for the public" had a definite and settled meaning through the decisions of the Court and the Commission. The Motor Carrier Act, 1935 (Part II, Int. Com. Act) as first enacted, covered unifications and consolidations of motor carriers by

Commission when passing upon any proposed transaction under paragraph (2), to—

give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; \* \* \*

That the adequate service which it was the policy or aim of the Act to ensure for the public was not, as contended by the appellants, so limited in kind as to exclude betterments in service, simply as such, is shown by the decisions of this Court from the beginning<sup>41</sup> and including decisions in-

separate provisions in section 213 thereof (49 Stat. 555-557) which provisions, including its provision for relief from the antitrust laws (Sec. 213 (f)) followed closely section 5 of the I. C. Act, as amended by Emergency Transportation Act, 1933, except the provisions then contained in section 5 for a plan of consolidation of the railroads (48 Stat. 217-219). The latter provisions were repealed by the Transportation Act, 1940, and section 5 was otherwise changed, the changes being particularly designed to bring the unification and consolidation of motor carriers and water carriers under the one section with the railroads (54 Stat. 905-908).

<sup>41</sup> The decisions in the *Wisconsin R. R. Case*, *supra*, in *The New England Divisions Case*, 261 U. S. 184, 189, and in *Dayton-Goose Creek Ry. v. U. S.*, 263 U. S. 456, all speak of the purpose of Transportation Acts 1920, to ensure an adequate transportation service for the public. These decisions were, of course, rendered at a time when the restoration of the transportation service of the country was necessary, but it is apparent, even from a casual reading of the opinions, that it was not considered that the purpose of the 1920 Act was directed solely to a restoration of the carrier's properties and service or that the purpose would come to an end when the Commission might conceivably determine and find that the transportation service of the country or of any particular section, met the needs of the public. For example, in the

volving orders of the Commission authorizing unifications of carriers under section 5, wherein the said policy of Transportation Act, 1920, was referred to and applied. *New York Central Securities Corp. v. United States*, 287 U. S. 12; *Texas v. United States*, 292 U. S. 522.

In the latter case the Court sustained as valid an order of the Commission under section 5 authorizing the Kansas City Southern Railway to lease the railroad properties of the Texarkana and Fort Smith Railway. The validity of the order was challenged by the State of Texas in the respect only of a provision of the lease which, as approved by the Commission, would permit, contrary to the laws of Texas, the removal from the State of the general offices, repair shops, etc., of the lessor company for purpose of consolidating the same with like offices and facilities of the lessee, all to the end of efficiency and economy of operation. Answer-

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*Dayton-Goose Creek Case, supra* (p. 478), it is said that "The New Act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country." Similarly as respects adequacy of service, what constitutes prompt handling of traffic would seem necessarily to depend on new inventions and other progress in developing speedier transportation and quicker deliveries at terminals. The decisions in *R. R. Comm. v. Southern Pacific Co.*, 264 U. S. 331, 341, and in *Texas & Pac. Ry. v. Gulf, etc., Ry.*, 270 U. S. 266, 277, also turned on the policy of the 1920 Act to ensure adequate transportation service for the public. These decisions have particular reference to that part of the policy (involved here along with the whole policy) directed to economies and prevention of waste.

ing contentions of the appellant that the Commission's approval of the lease provision was beyond its statutory authority and, referring to changes made in the Act by recent amendatory legislation, the Court said (pp. 530-531): "These broadening provisions of the Emergency Railroad Transportation Act, 1933, confirm and carry forward" the legislative policy of Transportation Act, 1920, "seeking to insure an adequate transportation service"; that "a primary aim of that policy was to secure the avoidance of waste" which "avoidance, as well as the maintenance of service, is viewed as a direct concern of the public"; and that—

The authority given to the Commission to authorize consolidations, purchases, leases, operating contracts, and acquisitions of control, was given in aid of that policy. *New York Central Securities Corp. v. United States*, 287 U. S. 12, 24, 25. The criterion to be applied by the Commission in the exercise of its authority to approve such transactions—a criterion reaffirmed by the amendments of Emergency Railroad Transportation Act, 1933—is that of the controlling public interest. And that term as used in the statute is not a mere general reference to public welfare, but, as shown by the context and purpose of the Act, "has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appro-

priate provision and best use of transportation facilities." *New York Central Securities Corp. v. United States, supra.*

The above case and the *New York Central Case, supra*, definitely supply, therefore, decisions of this court making direct application of the Act's purpose to ensure an adequate transportation service for the public to its provisions empowering the Commission to authorize such consolidations of carriers as it finds to be in the public interest and which, in doing so, hold substantially that the said criterion of a consolidation in the interest of the public has direct relation to the "adequacy of transportation service (which it is the Act's purpose to ensure for the public); to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities." The fact that the conditions of appropriate provision and best use of transportation facilities are essentials to such adequate transportation service, seems definitely to establish that the word "adequate" was not used to indicate a purpose to ensure for the public a transportation service of qualified adequacy; that is to say, that the word was not used to indicate a purpose, as in effect contended by the appellants, to withhold from the public the improvements in service, efficiency, etc., that would result from a consolidation unless it was also shown and found that the existing service available to it was inade-

quate.<sup>2</sup> The appellants' contention that it does is, it is true, limited to consolidations which would substantially lessen competition (Br. 40-41), but this simply emphasizes the lengths to which the appellants would have the Commission "go" in reading into Section 5 of the Interstate Commerce Act "The provisions and policies of the antitrust laws" (R. 92).

The appellants, in making their said contention that the Commission must, before approving a consolidation that substantially lessens competition or otherwise conflicts with the antitrust laws, first find that the existing service available to the public is inadequate, predicate the contention, as above said, on the provision of Section 5 directing the Commission to give weight to the effect of the consolidation on "adequate transportation service to the public." But this not alone assumes, contrary to the fact, that it was the Act's purpose, or aim, to ensure to the public a transportation service of qualified adequacy, but also loses sight of the fact that the statutory standard (or ultimate criterion) of a permissible consolidation is one that is in the interest of the public. Keeping this statutory standard in mind, it is manifest that any findings contemplated because of the direction to give weight to the effect of the consolidation on ade-

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<sup>2</sup> Inadequate in the sense emphasized by appellants of being "clearly inadequate" and shown to be so by "present existing facts" (Br. 38).

quate service to the public (including its essential conditions of economy, efficiency, etc.) would either be affirmative findings (such as here made by the Commission)<sup>43</sup> that the consolidation would result in improvements in service, economies or greater efficiency, or, if the evidence were to the contrary, findings which would give effect to that evidence and support the Commission's refusal to authorize the consolidations." From which it seems necessarily to follow that the fundamental error in the appellants' contention that the Commission may not authorize consolidations that substantially lessen competition without first finding (Br. 42-44) that the existing service available to the public is "inadequate" is that the contention would, in effect, take the statutory direction that the Commission give weight to the consideration of adequate transportation service and make it, with antitrust restrictions and prohibitions at-

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<sup>43</sup> As exemplifying this see discussion and accompanying underlying findings in the chapter of the report headed "Benefits of Proposed Unification."

<sup>44</sup> Even if the Commission, in balancing the evidence of improved service against the resulting diminution in competition, considered that the latter outweighed the former, the findings which it would make to support its conclusion that the proposed consolidation was not in the public interest would reflect the considerations inducing its conclusion and denial of the application, and would not, of course, be findings to the effect that since the lessening of competition that would result would be substantial and since the existing service available to the public was adequate, authority for the consolidation must be denied.

tached, the standard, or criterion, in consolidation cases instead of the prescribed standard of the public interest.

The appellants' contentions (Br. 41-46) that the Commission did not make the findings required by section 5 are without warrant. As shown in the present and preceding chapters, the Commission's report under the headings "Benefits of Proposed Unification" (R. 15), "Effect on Employees" (R. 18), "Competition" (R. 22) and "General" (R. 43), contains all the findings required or contemplated, to support its conclusion that the consolidation would be consistent with the public interest, including the findings contemplated by Section 5 (2) (c).

3. The Commission's authorizations of motor carrier consolidations, as well as its authorizations of railroad, water carrier, and other carrier consolidations, are provided for in section 5 of the Act and are governed, not by a special criterion, but by the same criterion of the "public interest," supplied by the Act to govern all such authorizations

It will have been noted that the appellants, both in their assignments of error and in their briefs allege that the Commission erred in basing its findings on "the standards and criteria prescribed by the Transportation Act of 1920 with respect to the merger of rail carriers instead of the standards and criteria prescribed by the Transportation Act of 1940 with respect to motor carriers" (R. 82, Br. 15). Upon a first reading thereof, at least, this allegation appears to be to

the effect that, while authorizations of rail and other Part I carrier mergers (or consolidations) continue to be governed by the standards and criteria inaugurated by Transportation Act, 1920, the authorizations of motor carrier mergers are governed by different and special standards and criteria prescribed by Transportation Act, 1940. On the other hand, the appellants, in argument under the allegation, urge that the different standards and criteria, which they allege were prescribed by the 1940 Act "with respect to the merger of motor carriers," were also adopted with respect to the merger of railroads and other carriers subject to the Act (Br. 18). But, since still other of their argument stresses the different and special <sup>45</sup> policy and purposes which the appellants assume that Congress had in mind with respect to motor carrier mergers, it seems appropriate at least to refer briefly to the facts which make manifest that mergers of motor carriers were not singled out for the prescription of standards and

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<sup>45</sup> In this connection it should be noted particularly that the appellants are apparently under the impression that the provisions of section 213 of the original Motor Carrier Act, 1935, (covering the unification and consolidation of motor carriers) were designed specially and particularly for motor carriers (Br. 18) whereas, except in the matter of a plan of consolidation, they followed closely, as hereinafter shown, the provisions of section 5, as amended by Emergency Transportation Act, 1933. For other statements showing that the appellants apparently consider that motor carriers were singled out for special treatment, see Brief 29-33.

criteria different from those which were to govern the mergers generally of carriers subject to the Act and particularly that they were not singled out to be governed by standards and criteria of what would constitute permissible mergers, or consolidations, under the antitrust laws.

As already mentioned, Part II of the Interstate Commerce Act (dealing with motor carriers) as first enacted in 1935,<sup>46</sup> covered the subject matter of unifications and consolidations by separate provisions in section 213 (49 Stat. 555-557) which followed closely section 5 of Part I, as amended by Emergency Transportation Act, 1933 (48 Stat. 217, 218; *Texas v. United States, supra*), except the provisions then in section 5, but eliminated by Transportation Act, 1940, for, and in respect of, a plan of consolidation of the railroads, and except for a proviso contained in section 213 (a) (1), reading as follows:

*Provided, however, That if a carrier other than a motor carrier is an applicant, or any person which is controlled by such a carrier other than a motor carrier or affiliated therewith within the meaning of section 5 (8) of part I, the Commission shall not enter such an order unless it finds that the transaction proposed will promote*

<sup>46</sup> The railroad and motor carrier parts of the Act were not actually termed Part I and Part II, respectively, until the 1940 amendments which also added Part III, dealing with water carriers.

the public interest by enabling such carrier other than a motor carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

As for the provision in section 5 of Part I for relief from the antitrust laws, section 213 of Part II contained a substantially identical provision, reading as follows:

(f) The carriers and any person<sup>47</sup> affected by any order made under the foregoing provisions of this section shall be, and they are hereby, relieved from the operation of the "antitrust laws," as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints, and monopolies, and for other purposes," approved October 15, 1914, and of all other restraints or prohibitions by or imposed under authority of law, State or Federal, insofar as may be necessary to enable them to do anything authorized or required by such order.

Along with the elimination by Transportation Act, 1940,<sup>48</sup> of the provisions of section 5 of Part

<sup>47</sup> Instead of the words "any person" the "relief clause" in section 5 used the words "any corporation" (48 Stat. 219). The word "person," as defined in the Motor Carrier Act included "any individual, firm, copartnership, corporation \* \* \*" (49 Stat. 544).

<sup>48</sup> With respect to the abandonment by the 1940 Act of the scheme of a consolidation of the railroads according to a plan of the Commission, the Committee report (to accompany S. 2009), speaking of this change, states at pages 2.

I for a plan of consolidation of the railroads that section was otherwise changed, the changes being particularly designed and worded so as to bring the subject matter of unification and consolidation of motor carriers and also water carriers under the one section with the railroads and other Part I carriers (54 Stat. 905-908). The clause, according relief from the antitrust laws, as now contained in section 5 (11) (set forth in Appendix), is, it will be seen, strengthened by adding the provision at the beginning that "the authority conferred by this section shall be exclusive and plenary" and the succeeding provisions designed to enable the carrier, or corporation, obtaining the authorization to avail themselves thereof "without invoking any approval under State authority." There had been doubt whether the "relief clause" covered prohibitions other than restraints of the same nature as the antitrust laws. It was settled that it did in *Texas v. U. S.*, 292 U. S. 522, 534, but questions of corporate capacity of companies incorporated under State law, such as raised in the *New York Cen-*

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28. and 30 that it was recommended in the report of the President's Committee of Six (pp. 30-32) and had also been recommended by the Commission (Report No. 433, pp. 2, 28, 30, 76th Cong., 1st Sess.). The principal reason for the abandonment seems, generally speaking, to have been that it was unworkable, at least without conferring compulsory authority on the Commission (52d Annual Report of I. C. C., pp. 14, 15. See also House Document No. 583, 75th Cong., 3d Sess., p. 39).

*tral Case*, 287 U. S. 12, were not wholly answered by the latter case or the *Texas case*. The last sentence of par. (11) provides, in effect, that, while the section is not to be taken to provide for a federal corporation, any power granted thereby to a carrier, or corporation, "shall be deemed to be in addition to and in modification of its powers under its corporate charter or under the laws of any State." That part of the "relief clause" which has always been in section 5 is preserved in the middle of par. (11) except for changes adding "officers" and "persons" to the "carriers" and "companies" accorded relief; and adding relief from Municipal as well as Federal and State restraints, limitations and prohibitions of law. All change, it will be noted, is in the direction of strengthening the clause.

In addition to the above-mentioned changes made in section 5 by the 1940 amendments, the Commission was given express authority to condition its approval of railroad unifications and consolidations upon (1) fair and equitable arrangements to protect the interests of railroad employees, and (2) upon the inclusion in the consolidation of other railroads in the territory involved. In both cases, the authority so expressly conferred, had been theretofore exercised by the Commission in the view that it was authority covered by the policy and purposes of Transportation Act, 1920. *Lowden v. United States*,

308 U. S. 225; *New York Central Securities Corp. Case, supra*. Another change made in the section which clearly is also intended to confirm the Commission in authority and action of a kind previously exercised and taken is that embodied in subparagraph (c), the first portion whereof has just been discussed in the preceding chapter. This subparagraph provides in full that—

(c) In passing upon any proposed transaction under the provisions of this paragraph, (2), the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

As shown in the preceding chapter, the first of the above considerations to which the Commission is directed to give weight is in effect asserted by the appellants to have been intended to change and modify the criteria governing consolidations together with the clause according relief from the antitrust laws (Br. 42-43); and, in asserting their contentions in this respect, the appellants apparently urge them, too, as particularly applicable in respect of motor carrier consolidations

(Br. 40-41). But it seems wholly plain that the said direction to the Commission was for the exactly opposite purpose of emphasizing that the amended section 5 was to be taken as still embodying the policy of Transportation Act, 1920, to ensure an adequate transportation service for the public. Emergency Railroad Transportation Act, 1933, had, in enlarging the section, strengthened and carried forward that policy with respect to rail and other Part I carrier consolidations together with its criteria of adequacy of transportation service, efficiency and economy and best use of transportation facilities. *Texas v. United States, supra*; and it cannot be considered that Congress, when in 1940 bringing the matter of consolidations of motor carriers and water carriers into the same section as governed the consolidation of rail and other Part I carriers, either intended that different and special criteria should apply with respect to motor carrier consolidations, or that it had any intention other than that the policy and aims of Transportation Act, 1920, should be further carried forward and applied without exception to Part I, Part II, and Part III, carriers.

Moreover, the fact that Congress, in enacting the 1940 amendments, did not intend that motor carrier consolidations should be governed by special criteria but intended instead that the established criteria under the policy of Transportation

Act, 1920, should govern generally the consolidations of all carriers subject to the Act, is further affirmatively shown by the policy provisions of the Motor Carrier Act, 1935, which were carried into the 1940 Act. The policy provisions of the former Act (49 Stat. 543) declared it to be the policy, *inter alia*, to foster sound economic conditions in such transportation and to promote adequate, economical, and efficient transportation services; and these purposes are now embodied in the National Transportation Policy announced in Transportation Act, 1940 (54 Stat. 899), the first part of which reads as follows:

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; \* \* \*

While the appellants concede that the National Transportation Policy as well as section 5 (2) (c) of the Act makes it the Commission's duty "to insure adequate transportation service" (Br. 38), they refer at the same time to the earlier sentence providing for fair and impartial regulation of all modes of transportation, "so administered as

to recognize and preserve the inherent advantages of each," and state that these inherent advantages in motor carrier transportation "are to be achieved through competition and not regulated monopoly." But, if the Act's policy to ensure adequate transportation service applies to the consolidation of motor carriers, then the conditions essential to such adequacy of transportation service" also apply, namely, the "essential conditions of economy and efficiency \* \* \* and best use of transportation facilities." *Texas v. United States*, *supra*, p. 531. The same decision and many others show that such economy, efficiency, etc., are intended to be achieved in considerable measure through the elimination of competitive wastes. Moreover, it would not be "fair and impartial regulation" to administer section 5 so as to permit certain modes of transportation to achieve such economies and efficiency and to exclude such criteria from consideration in the administering of the section with respect to other modes of transportation.

4. The appellants' contention that the Commission is authorized to approve consolidations only after giving due consideration and weight to the provisions and policies of the antitrust laws is, in the application made of it, not substantially different from their contentions as to the specific things it must, or must not, do because of those laws

In further support of their allegation that the Commission, in approving the consolidation, misconceived its statutory authority, the appellants contend that it was required to give consideration

and weight to the provisions and policies of the antitrust laws, and that this it failed to do. As pointed out in chapter 3, *supra*, the appellants' contention, there discussed, that, with respect to consolidations involving a substantial lessening of competition or otherwise in conflict with the antitrust laws, the Commission may not authorize the same unless it first finds that the existing transportation service available to the public is "clearly inadequate" (Br. 38, 40) shows the lengths they would have the Commission go in giving weight to the policies and provisions of the antitrust laws. Similarly, the appellants' further insistence that the Commission is required to give weight to the provisions and policies of the antitrust laws (Br. 26-33) is pressed to such lengths and is so confused with argument which contemplates that those laws must be given full effect, or substantially so (Br. 28-31, 39), that it is apparent that the appellants, in contending that the Commission was required to give weight to the policies and provisions of the antitrust laws assumed that it was expected to accept the criteria of a permissible consolidation under the restrictive provisions of the antitrust laws and apply such criteria either as paramount to, or in practical substitution for, the criteria entering into and constituting the standard laid down by the Interstate Commerce Act:

The Commission, it is true, is charged with the administering of the Clayton Antitrust Act

"where applicable to common carriers subject to the Interstate Commerce Act, as amended" (Clayton Act, sec. 11, 48 Stat. 1102; 15 U. S. C., sec. 21) but, in the numerous cases since 1920 involving the authorization of unifications of carriers under section 5 of the Interstate Commerce Act, it has never been considered that the Commission was governed by what would be a permissible unification under the Clayton Act. This is true of the cases today and it is true, too, of the cases during the period (prior to 1933) when the Interstate Commerce Act did not itself forbid unifications without Commission authority and when, therefore, the only express restrictions were those of the Antitrust Acts and other "restraints or prohibitions by law, State or Federal."<sup>49</sup> But the

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<sup>49</sup> Emergency Transportation Act, 1933, added to section 5 the express provision forbidding unification or consolidation without Commission authority (Sec. 5 (6), 48 Stat. 217, 218), which now appears in the Act as sec. 5 (4), 54 Stat. 907. (A like prohibition was placed in section 213 (b) (1) of the Motor Carrier Act, 1935 (49 Stat. 556) at the time when motor carriers were first made subject to the Commission's jurisdiction.) During the period prior to 1933 the Act itself did not prohibit unifications or consolidations, save as such might be implied (see I. C. Acts, Ann., p. 1355), and therefore, the only express restrictions then were, as above stated, the Antitrust Acts, etc. But there was no more reason then than now for looking to the Antitrust Acts to determine whether a unification was forbidden by the said Acts, except possibly to determine whether there was any occasion for obtaining the Commission's authorization. But that reason, it is plain, would not be to enable determination as to whether a proposed unification was one that was not forbidden by the Antitrust Acts, and therefore one which

Commission then as now was authorized to approve unifications if found to meet the standard of the public interest supplied by the Interstate Commerce Act, and not if found not to conflict with the Clayton and Sherman Acts and other prohibiting Acts, and then as now the carriers concerned were relieved from the operation of the said Antitrust and other Acts to the extent necessary to do the things permitted and required pursuant to such authorization and not to the extent only of doing the things that would not conflict with the said operation of the said Antitrust and other Acts.

It does not follow from the above, however, that the transportation criterion in section 5 of the Interstate Commerce Act itself does not include consideration of the effect of a proposed unification of carriers on competitive conditions in the transportation field; for such effect was given full consideration in the instant case and earlier, *Transport Co. Case*, 36 M. C. C. 61, 68, and has also figured importantly in railroad unifications. But this simply means that any detriment to the public interest from a lessening of competition is to be considered along with the benefits resulting from the unification and, since it is plain that the extent of the detriment to the

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the Commission could authorize, but would be to determine whether there was enough likelihood that the unification would be violative of said Acts to warrant resort to the Commission.

public interest in transportation from any lessening of the carriers "competitive striving" for business is the extent to which the same might affect the charges exacted from, and service rendered to, the public under the conditions of close regulation thereof laid down by the Interstate Commerce Act, it is made particularly clear that the weighing of such lessening of competition that might result from a proposed consolidation of carriers against the showing of benefits also resulting enters naturally into the criterion of the public interest based upon which the latter Act affirmatively permits of, and provides for, such a consolidation; and this being so, there is left no warrant for a strained and unnatural resort to a weighing thereof under the restrictive provisions of the Antitrust Acts and other prohibiting Acts.

The appellants' frequent use of the phrase "substantial lessening of competition" indicates that the Clayton Act is one of the antitrust laws to which they refer. The other is, of course, the Sherman Act. Their brief refers to it by name and bases upon it that part of their argument intended to show that, with the enactment of the 1940 amendments to the Act, Congress restored the original section 5 policy with respect to competition which it is asserted was later embodied in the Sherman Act (Br. 18-19). Further pursuing this argument, the brief contends that sec-

tion 5 should be construed as requiring the Commission to be guided by, and to give effect to, the policy and provisions of that Act which procedure, it is said, might well be regarded as a more effective means of ensuring compliance therewith than the enforcement remedies available to the Department of Justice, since section 5 requires prior administrative approval before a consolidation can be effected (Br. 28-29). This argument leaves no "room" for escape from the conclusion that it is the appellants' position in practical effect that the Commission is required to administer and apply the prohibitions of the Sherman Act.

In the Commission proceeding, as above pointed out, and in the lower court (R. 85-86) the Sherman Act was referred to by the appellants as prohibiting "unreasonable" restraint of competition, and, as in effect suggested by the lower court, such reference to that Act as prohibiting unreasonable restraint of competition carries the import that only those restraints which may, in light of surrounding circumstances and conditions, be found to be unreasonable are the restraints in fact forbidden by those Acts. But, while this is doubtless correct with respect to the Sherman Act (*United States v. U. S. Steel Corp.*, 251 U. S. 417; *Standard Oil Case*, 221 U. S. 1, *Tobacco Case*, 221 U. S. 106, 178), it is, of course, the fact that such "unreasonable restraint" is not an express statutory standard of unlawfulness prescribed for ad-

ministrative guidance,<sup>50</sup> but is a standard of unlawfulness found to have been laid down by that Act for judicial guidance.<sup>51</sup> And, moreover, it is, of course, further the fact that what would be unreasonable restraint of competition under the Sherman Act whose single purpose is directed to the preservation of competitive forces (19 Cong. Rec. 6041; *Standard Oil Co. v. United States*, 221 U. S. 1, 50) and which expresses that purpose in terms of prohibition carrying criminal penalties, cannot be regarded as affording a standard of the extent to which the free play of competition was intended to be preserved under an Act (the I. C. Act) which, in order to advance its own aims and purposes, expressly provides for the authorization

<sup>50</sup> The Sherman Act is committed to the Courts. The Clayton Act's prohibition against the acquisition by one company of the capital stock of another has been held to forbid such acquisitions as will probably effect a substantial lessening of competition. *International Shoe Co. v. Federal Trade Comm.*, 280 U. S. 291. The prohibition contains a proviso which provides substantially that it shall not apply to companies acquiring such stock solely for investment and not using the same to bring about the substantial lessening of competition. 15 U. S. C., sec. 18. See *Int. Com. Comm. v. Pennsylvania R. R.*, 169 I. C. C. 618. Order held invalid in *Pa. R. R. v. Int. Com. Comm.*, 66 Fed. (2d) 37. Affirmed by an equally divided Court, 281 U. S. 651.

<sup>51</sup> That the standard of "reasonableness" may vary with the Acts in which it is used is demonstrated by the fact that what constituted "rate reasonableness" under the I. C. Act prior to the amendments made by the Act of 1920 was changed by the very aims and purposes of the latter Act here under consideration. *Wisconsin R. R. Comm. v. C. B. & Q. R. R.*, *supra*, p. 585.

of the consolidation of independent carrier companies into a single company and expressly relieves the companies concerned from the operation of the said Sherman Act and other Acts so far as necessary to avail themselves of the authorization. *Texas v. United States*, 292 U. S. 522, 534.

While it is true, as above stated, that the appellants' contention that the Commission is authorized to approve only such consolidation as do not involve "unreasonable" restraint of competition within the sense of the antitrust laws is different in terms at least from their contention that the Commission, in passing upon a proposed consolidation, is required to give weight to the provisions and policies of the antitrust laws, it should be again emphasized (1) that, judged by the application which the appellants make of the latter contention, it is not at all clear that the contention is more than marginally different from the other and (2) that, in any event, it is quite as squarely in conflict with the plain language of section 5. As support for the contention, the appellants rely upon this Court's decision in *Southern S. S. Co. v. National Labor Relations Board*, 316 U. S. 31, which involved an order of the Labor Board requiring the Steamship Company, among other things, to reinstate certain members of the crew of one of its boats who had been discharged for engaging in a strike under conditions which the Court held amounted to

mutiny in violation of sections 292 and 293 of the Criminal Code. The Board contended that the strike did not violate the sections in question but urged that, even if it did, its order was nevertheless valid by reason of the fact that section 10 (c) of the National Labor Relations Act permitted it to require an employer who has committed an unfair labor practice to take such affirmative action, including reinstatement of employees, as will effectuate the policies of the Act. As to this the Court said (p. 46) that the authorization had considerable breadth, but that it was also true that the discretion had its limits, and that it had already begun to define them. Continuing, the Court said (p. 47):

\* \* \* It is sufficient for this case to observe that the Board has not been commissioned to effectuate the policies of the Labor Relations Act so single-mindedly that it may wholly ignore other and equally important Congressional objectives. Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative body that it undertake this accommodation without excessive emphasis upon its immediate task.

That the above decision and statement are not apposite here is apparent from the facts, among others, (1) that, while the Labor Board's author-

ity in the respect of unfair practices under the Labor Act's policies had not as yet been defined, the Commission's authority under the policy of Transportation Act, 1920, including its authority under section 5, has been the subject of a long line of decisions of the Court, and (2) that, while the Labor Act makes no mention of the said sections 292 and 293 of the Criminal Code, section 5 of the Interstate Commerce Act does make mention of the antitrust laws in its provision which expressly relieves from the operation of those laws the carriers participating in a consolidation authorized by the Commission. In the latter situation, it is clear that Congress itself did not expect that the policy and provisions of the Interstate Commerce Act be accommodated to those of the antitrust laws; and it is a situation, therefore, that is plainly not included in the Court's statement, above quoted, that frequently the Congressional purpose calls for careful accommodation of one statutory scheme to that of another. The Interstate Commerce Act, being a statute which places the carriers under close regulation as to their charges and in many other respects, Congress' departure in the matter of consolidations from the policies, or statutory scheme, of the antitrust laws furnishes no ground, even remotely, either for surprise or for the thought that such action was in any way inconsistent.

5. The construction which appellants ask be placed upon the statute is in square conflict with its language and with the decisions applying it from time of enactment.

The Congress with full realization, it must be assumed, that the legislation was not in line with the prohibitions of the antitrust laws, nevertheless, provided in section 5 for authorization of consolidations of common carriers subject to Interstate Commerce Act regulation and, at the same time removed the obstacle presented by said prohibitions by adding a provision expressly granting relief therefrom. *New York Central Securities Corp. v. United States*, 287 U. S. 12, 25, 26. If the provision for such relief had not been included in the legislation, it still would seem that it would have had to be implied from the power and duty placed with the Commission; and, with the provision expressly included, there is little "room" for the appellants' insistence that the statute be read as precluding consolidations prohibited by the antitrust laws or by the policies and provisions thereof.

In the *New York Central Case*, *supra*, which involved the validity of an authorization for unification by 99-year lease of railroads embraced in the New York Central System, the Court, answering contentions to the contrary, held that the standard of the "public interest," when read in its context in the Act, amply supplied the transportation criteria to be followed by the Commission. The Court said (p. 25):

The provisions now before us were among the additions made by Transportation Act, 1920, and the term "public interest," as thus used is not a concept without ascertainable criteria, but has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities, questions to which the Interstate Commerce Commission has constantly addressed itself.

Continuing, the Court said (pp. 25, 26) that "the fact that the carriers' lines are parallel and competing cannot be deemed to affect the validity of the authority conferred upon the Commission"; for, "the Congress which had power to impose prohibitions in the regulation of interstate commerce, *Northern Securities Co. v. United States*, 194 U. S. 197, had equal power to foster that commerce by removing prohibitions and by permitting acquisitions of control where that was found to be an aid" to purposes of Transportation Act, 1920, and that—

\* \* \* Exercising this paramount power, the Congress expressly provided in subdivision (8) of section 5, which has direct reference to subdivision (2) that "the carriers affected by any order made under the foregoing provisions of this section" are "relieved from the operation of the antitrust laws," and "of all other restraints or prohibitions by law, State or Federal, in so far as may be necessary to

enable them to do anything authorized or required by any order made under and pursuant to the foregoing provisions of this section." The question whether the acquisition of control in the case of competing carriers will aid in preventing an injurious waste and in securing more efficient transportation service is thus committed to the judgment of the administrative agency upon the facts developed in the particular case.<sup>52</sup>

The above is about as clear a statement as could be made that the authorizations of unifications, or acquisitions of control, which relieve from the Antitrust Acts, etc., are to be based upon transportation criteria supplied by the Interstate Commerce Act and certainly refutes any suggestion that they are to be based on criteria of what is, or is not, forbidden by the said Antitrust Acts and other prohibiting Acts. The Court, it will be seen, accepts, at least for purposes of the case, the fact alleged by the appel-

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<sup>52</sup>As given to it by Transportation Act, 1920, the Commission's authority to approve unifications was contained in section 5 (2), and its authority to approve consolidations in section 5 (6) (41 Stat. 481, 482). In authorizing a consolidation, it had to find that it conformed to its plan of consolidation of the railroads (sec. 5 (4), which had not been completed at the time of the *New York Central Case*, which presumably was the reason its authority was invoked to approve unification by lease which it could do so long as not amounting to consolidation. The Court held that the acquisition of control by lease did not amount to a consolidation within the meaning of the Act (p. 23).

lant (p. 22)<sup>33</sup> that the lines were parallel and competing; and the Court's further statement with respect to the fostering of commerce by the removal of prohibitions and the permitting of unifications has direct reference, of course, to the antitrust laws and to unifications prohibited thereby, and, therefore, is not only a holding as to the removal of the antitrust prohibitions, but also gives recognition to the fact that the purposes of said prohibitions were not the same but, on the contrary, were an obstacle to the accomplishing of the purposes of the Interstate Commerce Act in permitting of unifications. From all of which it is plain that neither the criterion of the policies and provisions of the Antitrust Acts, or the criterion of whether a consolidation would involve the *unreasonable* restraint of competition forbidden by those Acts, is not the criterion prescribed for Commission guidance. The criterion prescribed is the "public interest," and, as emphasized by the Court (p. 25) the considerations entering into that criterion are the Act's said purposes to promote adequacy, economy and efficiency of service and best use of transportation facilities, etc., "questions to

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<sup>33</sup> The appellant alleged that the lessor and lessee main lines were parallel and competing so that competition would be suppressed in violation of the antitrust laws, and that the attempt to authorize the Commission to approve the unification was an unconstitutional delegation of power.

which the Commission had constantly addressed itself in the exercise of authority conferred."

The decisions under section 5 other than that in the *New York Central case*, *supra*, show quite as plainly as is shown in that case that the criteria governing the Commission's determinations are those furnished by the above-stated purposes of the Interstate Commerce Act itself and, by the same token, show that the Commission is not expected to resort to the purposes of the antitrust prohibitions for guidance. In the case of *Texas v. United States*, *supra*, the Court said that "The criterion to be applied by the Commission" was "that of the controlling public interest" and it then quoted from the *New York Central case* to show that the term "public interest" afforded a definite guide for Commission determinations (292 U. S. 531). In *Missouri Pacific Ry. v. United States et al.*, 4 Fed. Supp. 449, the attack on the Commission's authorization was principally based on the Commission's refusal to consider rights of the Texas & Pacific and the alleged interest of the public in the so-called Gould-Huntington agreement. The Commission had held substantially that the "public interest" criterion did not require, or permit, it to attempt to construe and apply the agreement, and in this it was sustained by the lower court (p. 454), whose decision was affirmed *per curiam* in 293 U. S. 524.

In *Control of Central Pacific by Southern Pacific*, 76 I. C. C. 508, the Commission approved a unification as in the public interest which was established in law and fact to constitute an *unreasonable* restraint prohibited by the Sherman Act. The unification had been entered into prior to the enactment of the section 5 provisions with respect to unifications and relief from the antitrust laws and had been held (*United States v. So. Pac. R. Co.*, 259 U. S. 214) to be violative of the Sherman Antitrust Act. The Commission, in that case, held in substance that the fact that a unification was violative of the Sherman Antitrust Act did not deprive it of jurisdiction; that full effect had to be given the provision for relief from the antitrust laws and other restraints and prohibitions of law and that when it, upon broad considerations of the public interest, in effect granted such relief, it was exercising a power granted to it alone (p. 516).

The Commission was upheld in the above in *United States v. Southern Pacific Co.*, 290 Fed. 443, the Court holding, among other things, that (p. 450)—

By virtue of the Commission's aforesaid order of authorization said ownership of said stock under conditions imposed by the Commission is now lawful, and in respect thereof the Southern Pacific Company and the Central Pacific Railway Company are relieved from the operation of the Sherman

Law (as well as of all other restraints or prohibitions of law, state or federal) in so far as necessary to enable them to do anything authorized or required by the said order of approval and authorization of the Commission.

Accordingly, it will be seen that despite the fact that the unification involved in this case had been settled and established as working an *unreasonable* restraint prohibited by the Sherman Act, the District Court, nevertheless, had no difficulty in finding that the unification "is now lawful!" and the carriers "relieved from the operation of the Sherman Law." True, the United States did not take this case to the Supreme Court, but it would seem that that Court's decision in the first case to reach it involving the question, namely, the *New York Central case, supra*, was in all essential respects the equivalent of an affirmation of the lower court's decision in the *Southern Pacific case*.

The Commission's views, as expressed in the present motor carrier case, are the same as the views it has held from the beginning. When, as above in effect stated, Congress made motor carriers subject to regulations generally and gave its express authority for their unification or consolidations, accompanied by its same express provision for relief from the antitrust laws and other restraints, it is manifest that it had no thought of relaxing its aims and purposes of promoting

economy and efficiency of service and best use of facilities under the Interstate Commerce Act in favor of a "brand" compatible with the prohibitions of the antitrust laws. And, moreover, the instant motor carrier case similarly as the Southern Pacific and New York Central cases, sharply illustrates that the very circumstances rendering a unification in the public interest may also be the circumstances rendering its violative of the Anti-trust Acts.

The *Southern Pacific case*, *supra*, affords opportunity to contrast from a factual standpoint a unification which, on the one hand, constituted an unreasonable restraint prohibited by the Sherman Antitrust Acts and, on the other, was plainly in the public interest under the Interstate Commerce Act. There the Commission, speaking of the manner in which the Court required separation of the Central Pacific from the Southern Pacific, said (76 I. C. C. 508, 520) that it entertained no doubt that such arrangements were practicable and would eliminate or mitigate many of the disadvantages of separation to which it had referred, but that, on the whole, it was—

convinced that even if everything of this nature *which can be done were done*, the result would be more expensive and less efficient and satisfactory service than can be rendered under unified control. The two systems would be weakened both financially and from a standpoint of service. In the

course of time this situation might find partial remedy, but in many respects *no remedy would be possible*. [Emphasis supplied.]

The above and earlier statements of the Commission that the separation of the roads would result in duplication of investment, increased cost of transportation and doubt as to whether the Central Pacific would, for a time at least, have the earning capacity and financial ability to sustain its burdens of fixed charges and provide for the new equipment and improvements necessary to meet the requirements of the public, reminds of the showing in the instant case that the unifying of the carriers involved and resultant combining of their facilities and revenues would enable a fuller use of much needed equipment and terminals and many improvements in service. In the former case the fact that like benefits and advantages would be lost did not save the unification from constituting an *unreasonable* restraint condemned by the Sherman Act, and, similarly here the fact that said benefits would be gained does not, according to the appellants' contentions, save the unification authorized from the prohibitions of that Act and other Antitrust Acts.

Another illustration of the fact that the policy and provisions of the antitrust prohibitions are not in harmony with the criterion of the "public interest" under the Interstate Commerce Act is

afforded by the *New York Central case, supra*; for, it is apparent that in that case the very unifying of the parallel lines and services involved, which, on the one hand, was alleged to suppress competition in violation of the Antitrust Acts,<sup>54</sup> was the source, on the other, of much of the economies and betterments of service advanced to support the unification as in the public interest. 287 U. S. 12, 23, 25. See also 150 I. C. C. 291, 292. The same circumstance is present with respect to the duplicating routes and facilities in the instant motor carrier case, that is, the unifying of operation which will effect economies and betterments in service is also the very thing which will eliminate competition between the carriers. The appellants' objection, too, to the instant consolidation because it will result in instances of operations where Associated Transport will be the sole motor carrier conducting such operations seems further illustrative of the conflict between the Antitrust Acts and the regulatory objectives of the Interstate Commerce Act; for, whatever may be the prohibitions of the Antitrust Acts

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<sup>54</sup> The fact that, since the New York Central already had stock control, competition may have been already largely eliminated, does not affect the illustration. The Central showed that it could bring about economies and improve service by routing traffic over the lines of the constituent carriers constituting the most direct routes and asserted that it could not do this, at least to the same extent, so long as it had only stock control because it had to observe the rights of minority interests (150 I. C. C. 291, 292).

in this respect, an application for consolidation under the Interstate Commerce Act could not be properly denied because the applicant would, as to certain of the operations, be the sole operator and thus have a "monopoly" of such service. If such restrictions against the granting of applications were to be read into section 5, there would be many situations where, as in effect stated by the Commission, the public would have to be denied the benefit of a new service, or even an extension of service into new territory, for the reason simply that, being new, the carrier given the authority would be the sole operator and have, for a time at least, a monopoly in the rendering of the services.

The decision in *Texas v. United States*, *supra* (292 U. S. 522, 530, 531), shows that the purposes of Transportation Act, 1920, to promote an adequate and efficient transportation service for the public, avoidance of waste and best use of transportation facilities, was confirmed and carried forward by the broadening provisions of Emergency Transportation Act, 1933. The more recent decisions in *Lowden v. United States*, 308 U. S. 225, 230, and *Int. Com. Comm. v. Railway Labor Assn.*, 315 U. S. 373, 376, 377 (the latter rendered subsequent to Transportation Act, 1940), show that no change has since been made in those purposes. As for the clause in section 5 according relief from the antitrust laws and other re-

straints and prohibitions in law, Federal, State, or Municipal, it is, as above stated, shown by its own terms to have been broadened and strengthened by the 1940 amendments. (See Appendix.)

6. The Commission's approval of the consolidation, being fully supported by its findings and the evidence, stands as a valid authorization, bringing into play the clause of the statute expressly relieving the participating carriers from the antitrust laws

Since, as above stated, the benefit to the public from competition between carriers for traffic lies in its effect as an incentive to improved service and lower rates, any lessening of competition resulting from a consolidation of carriers proposed under section 5 of the Interstate Commerce Act is a matter of public concern and, therefore, properly to be considered, along with the benefits also resulting, in determining whether the consolidation proposed meets the criterion, or standard, set up by that section of a consolidation that is consistent with the public interest. And while, since, as also above stated, the extent of any detriment to the public from such lessening of competition is plainly affected by the fact that the rates and service of the participating carriers and of substantially all their competitors are subject to close regulation under the Interstate Commerce Act, this fact by no means eliminates from consideration the lessening of competition resulting from the proposed consolidation of carriers, although it does make all the more apparent that the weighing thereof against the showing of

resulting benefits enters naturally into, and is specially reflected by, the particular criterion, based upon which the said regulatory Act provides for the authorization of such a consolidation.

In pursuance, therefore, of the need for giving consideration to the effect of the proposed consolidation on competitive conditions in the field in which Associated Transport would operate, the Commission, as above shown, addressed itself to that question and, upon substantial, and in fact abundant, evidence, found that the motor carrier competition that would remain after the consolidation of the eight carriers into Associated Transport was ample throughout the territory involved; and it also made findings as to the competition other than by motor carriers that would be afforded, as for example, that afforded by rail carriers, by express companies, by water and contract carriers, by carloading and forwarding companies and other agencies of transportation (Supra, p. 56). As for the appellants' contention that Associated Transport would be of a size enabling it to suppress the competition of independent motor carriers, this is answered fully by the Commission's discussion and findings, reviewed above, including its findings that there was no indication that anything approaching a monopoly had resulted from the operations of other large systems which it referred to, and, in

effect, that there was no reason to believe that Associated Transport would be even able to secure more than its proportionate share of the available traffic.

Accordingly, the Commission's findings that the numerous independent carriers that would remain after the consolidation would afford ample competitive service throughout the territory involved and its findings showing that there was no reason to believe that Associated Transport would be able to suppress the competition of independent carriers, or secure a disproportionate share of the traffic, lead rationally to its conclusion with respect to the effect of the consolidation on the competitive situation, namely, its conclusion "that the proposed transactions would not result in undue restraint of competition" (R. 37). With this element thus disposed of and showing that there would be little, if any, loss to the shipping public of the benefits from competitive effort, the many direct benefits which it was shown might be reasonably expected could, it would seem, be "put down" as practically net gain. Since these benefits have been already discussed in the preliminary statement of this brief, it is sufficient here to mention a few outstanding ones, such as that the unification of the carriers into one unit would, for example, enable the inauguration of through-trailer service, cutting down the time in transit of traffic now interchanged and reducing

terminal costs and loss and damage claims; would enable the consolidation and more convenient use of the terminals now separately maintained in cities and towns and the establishment of terminals in additional towns; would enable the more efficient and greater utilization of equipment now separately owned, this being particularly important because of the present difficulty in securing adequate equipment to meet the needs of the public; and would enable the extension throughout the system, as planned, of a scientific maintenance and safety program which would add to the average life of equipment and result in safer operations and fewer road failures (R. 15-16). Along with the improvements in service so enabled, it was shown that, through the elimination of duplicating facilities and service and greater efficiency, there would result very large savings and economies, and that further economies could be effected through the greater purchasing power of Associated Transport and its ability to obtain financing at lower cost (R. 17-18).

Another thing outstanding in the case was that the method of promoting the consolidation directly through the stockholders of the companies involved enabled a conservation of assets not otherwise possible, or at least not generally achieved through other methods. This, the Commission emphasized by reference to the earlier *Transport Co. case*, stating that, while in that case substantially

all the consideration for the properties was to be paid in cash to be obtained from the public, and large promotional and organizational fees were to be paid, in the instant case the stockholders of the constituent carriers were to receive no cash and no fees were to be paid to promoters or organizers (R. 44-45).

In short, the proposed consolidation gave a decided promise of marked betterments of service, of greatly reduced costs in the rendering thereof and of a carrier resulting whose assets would not be depleted at its inception; and, since ample competitive service would remain and no undue restraint result, such consolidation would cause little, if any, loss to the public of the benefits from competitive effort. These results and circumstances being established by the Commission's findings on a record of evidence which was plainly ample, it is apparent that there was an entirely sound basis in fact and reason for its conclusion that the proposed consolidation would be consistent with the public interest (R. 45-46), and for its order (R. 56) authorizing the consolidation based on its said conclusion as to the public interest. And such authorization being made and entered, the carriers and persons concerned were (if the statute be followed) thereupon "relieved from the operation of the antitrust laws and of all other restraints" etc., insofar as necessary to the transactions authorized (Sec. 5 (11)).

### III. The authorization of security issues

The complaint and the assignments of error in terms attack the Commission's order both as to its authorization of the consolidation and as to its authorization for issuance of securities necessary to consummate the consolidation. The attack on the latter appears to rest practically in whole on the asserted invalidity of the former, and insofar as this is the fact, has been shown to be groundless. To the extent that the appellants may be taken as making separate attack on the security authorization, it is submitted that the discussion in the preliminary statement (pages 16-25) shows that the Commission acted within its authority and made adequate and, in fact, full findings, and that the record references there given show that its findings are amply supported by the evidence.

### CONCLUSION

For the above reasons it is respectfully submitted that the decree of the lower court should be affirmed.

DANIEL W. KNOWLTON,

*Chief Counsel,  
Interstate Commerce Commission.*

NOVEMBER 1943.

## APPENDIX

### Statutes involved

Pertinent provisions of the Interstate Commerce Act important in the consideration of this case are:

SEC. 5. (2) (a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in, or joint use of, any railroad line or lines owned or operated by any other such carrier and terminals incidental thereto.

(b) Whenever a transaction is proposed under subparagraph (a), the carrier or

carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in the case carriers by motor vehicle are involved, the persons specified in section 205 (e)), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing, and a public hearing shall be held in all cases where carriers by railroad are involved. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

(c) In passing upon any proposed transaction under the provisions of this paragraph (2), the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

(d) The Commission shall have authority in the case of a proposed transaction under this paragraph (2) involving a railroad or railroads, as a prerequisite to its approval of the proposed transaction, to require, upon equitable terms, the inclusion of another railroad or other railroads in the territory involved, upon petition by such railroad or railroads requesting such inclusion, and upon a finding that such inclusion is consistent with the public interest.

(e) No transaction which contemplates a guaranty or assumption of payment of dividends or of fixed charges, shall be approved by the Commission under this paragraph (2) except upon a specific finding by the Commission that such guaranty or assumption is not inconsistent with the public interest. No transaction shall be approved under this paragraph (2) which will result in an increase of total fixed charges, except upon a specific finding by the Commission that such increase would not be contrary to public interest.

(f) As a condition of its approval, under this paragraph (2), of any transaction in

volving a carrier or carriers by railroad subject to the provision of this part, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this Act, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

(4) It shall be unlawful for any person, except as provided in paragraph (2), to enter into any transaction within the scope of subparagraph (a) thereof, or to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more carriers, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or

management accomplished or effectuated after the enactment of this amendatory paragraph and in violation of its provisions. As used in this paragraph and paragraph (5), the words "control or management" shall be construed to include the power to exercise control or management.

(11) The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall have full power (with the assent, in the case of a purchase and sale, a lease, a corporate consolidation, or a corporate merger, of a majority, unless a different vote is required under applicable State law, in which case the number so required shall assent, of the votes of the holders of the shares entitled to vote of the capital stock of such corporation at a regular meeting of such stockholders, the notice of such meeting to include such purpose, or at a special meeting thereof called for such purpose) to carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under State authority; and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are hereby relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for in accordance

with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction. Nothing in this section shall be construed to create or provide for the creation, directly or indirectly, of a Federal corporation, but any power granted by this section to any carrier or other corporation shall be deemed to be in addition to and in modification of its power under its corporate charter or under the laws of any State.

SHERMAN ANTITRUST ACT, JULY 2, 1890 (26 STAT. 209)

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: \* : \* \*

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

# SUPREME COURT OF THE UNITED STATES.

No. 31.—OCTOBER TERM, 1943.

McLean Trucking Company, Inc.,  
the Secretary of Agriculture of  
the United States, et al., Appel-  
lants,

vs.

The United States of America,  
Interstate Commerce Commission,  
et al.

Appeal from the District  
Court of the United States  
for the Southern District  
of New York.

[January 17, 1944.]

Mr. Justice RUTLEDGE delivered the opinion of the Court.

This is an appeal from a decree of a statutory three judge court,<sup>1</sup> 48 F. Supp. 933, refusing to set aside certain orders of the Interstate Commerce Commission which had authorized consolidation of seven large motor carriers.

Associated Transport, Inc., was organized in Delaware in March, 1941, to bring about the proposed merger. In July, 1941, it applied to the Interstate Commerce Commission for permission, under Section 5 of the Interstate Commerce Act, as amended (49 U. S. C. § 5; 54 Stat. 898, 905), to obtain control of eight motor carriers, through purchase of their capital stock, and to consolidate their operating rights and properties into one unit within a year from the date it acquired stock control. At the same time, Associated applied for permission under Section 214 of the Motor Carrier Act of 1935 (49 U. S. C. § 314; 49 Stat. 543, 557, 52 Stat. 1240, 54 Stat. 924) to issue preferred and common stock to be used mainly in exchange for stocks of the eight common carriers and four associated noncarriers.

Before the Commission, approval of the applications was opposed by the Secretary of Agriculture, the Anti-Trust Division of the Department of Justice, the National Grange, four fruit growers associations and Super Service Motor Freight Company, a motor carrier.<sup>2</sup> An examiner held hearings at which evidence

<sup>1</sup> 28 U. S. C. §§ 44, 47, 47a, 345.

<sup>2</sup> Other motor carriers, shippers and shippers' organizations intervened in the proceeding, as did also the International Brotherhood of Team-

was introduced, and the Commission heard argument on objections to his report before finally authorizing the consolidation.<sup>3</sup> 38 M. C. C. 137. McLean Trucking Company, Inc., a motor carrier which claims to compete with some of the carriers included in the merger, brought suit in the District Court to set aside the Commission's orders. The Secretary of Agriculture and the American Farm Bureau Federation intervened as plaintiffs. The United States confessed error. The Interstate Commerce Commission and the parties to the merger defended the Commission's order.

The principal issues, later set forth with particularity, are intertwined. They relate to whether the Commission applied a proper standard in concluding to approve the merger; whether it failed to give due weight to the prohibitions and policies of the anti-trust laws; and whether, upon the evidence and within the meaning of Section 5(2)(b) of the Interstate Commerce Act, the Commission rightly could determine that Associated, upon consummation of the merger, would not be affiliated with any railroad. The Commission resolved all of these questions in favor of the merger, as did the District Court.

In one respect, however, the case as presented to the court was in different posture than as it came to the Commission. This change arose from the elimination of one of the constituent companies, Arrow Carrier Corporation, from the merger between the time the Commission's orders were rendered and the hearing in the District Court. After the suit was begun the Commission, on the applicant's petition, modified its orders to exclude Arrow. Accordingly the Commission also amended its answer to indicate the change, and the case was decided on the orders as modified. They present the only questions for our consideration. It may be noted that the elimination of Arrow has bearing upon the issue relating to anti-trust policy, but more particularly on that relating to railroad affiliation.

The eight carriers originally sought to be merged<sup>4</sup> were Arrow Carrier Corporation, Paterson, N. J.; Barnwell Brothers, Inc., Burlington, N. C.; Consolidated Motor Lines, Inc., Hartford,

sters, Chauffeurs, Warehousemen and Helpers of America. Except for the latter, which at first opposed but ultimately supported the application, they took no position on the question whether the application should be approved.

<sup>3</sup> Three commissioners dissented. Approval of the merger was qualified by the imposition of certain conditions not here relevant.

<sup>4</sup> The four noncarriers, each associated with one of the carriers, are Barnwell Warehouse & Brokerage Company (associated with Barnwell), Brown

Conn.; Horton Motor Lines, Inc., Charlotte, N. C.; McCarthy Freight System, Inc., Taunton, Mass.; M. Moran Transportation Lines, Inc., Buffalo, N. Y.; Southeastern Motor Lines, Inc., Bristol, Va.; and Transportation, Inc., Atlanta, Ga. The merger embraces some of the principal operators along the Atlantic seaboard from Massachusetts to Florida. Certain of them serve communities as far west as Cleveland, Ohio, Nashville, Tennessee, and New Orleans, Louisiana. But the most important effect will be to create an end-to-end consolidation from points in the far South to New England, with obviously large possibilities for through service. According to evidence before the Commission the total assets of the companies involved, as of April 30, 1941, exceed \$8,000,000 and their gross operating revenues for 1940 exceeded \$19,000,000. The carriers operate principally as motor vehicle common carriers of general commodities over regular routes totalling 37,884 miles. Over 13,546 miles between important service points one or more competes with others in the group.<sup>5</sup> This competitive mileage will be eliminated by the merger, leaving a single carrier with routes extending over 24,338 miles.

As a result of the proposed merger Associated will be the largest single motor carrier in the United States—at least in terms of its estimated revenues—and no other single motor carrier will compete with it throughout its service area. Nevertheless, after careful consideration and on evidence clearly sufficient to sustain it, the Commission found that on completion of the merger “there would remain ample competitive motor-carrier service throughout the territory involved” and in addition that one or more rail carriers would offer substantial competition to Associated at all principal points. It also found that the consolidation would result in improved transportation service. Through movement of freight would be simplified and expedited, equipment would be utilized

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Equipment & Manufacturing Company (associated with Horton), Conger Realty Company (associated with Horton), and Southern New England Terminals, Inc. (associated with McCarthy).

<sup>5</sup> The Commission found that Consolidated and McCarthy compete substantially throughout Connecticut, Massachusetts and Rhode Island but Consolidated alone operates between those areas and New York City. Consolidated and Moran compete between the principal points in New York State, but Moran's routes also extend to Cleveland, Ohio, and to several points in northern Pennsylvania. There is some competition among Arrow, Consolidated and Moran in New York, and others of Arrow's routes parallel those of Barnwell and Horton. Barnwell, Horton and Southeastern compete to some extent in parts of the Middle Atlantic States (excluding New York). Barnwell, Horton and Transportation, Inc., compete in portions of the southern region, and Southeastern competes somewhat with them in that area.

more efficiently, terminal facilities improved, handling of shipments reduced, relations with shippers and public regulatory bodies simplified, safe operation promoted, and substantial operating economies would be achieved. The Commission concluded that the applicant's assumption of the fixed charges of the carriers would not be inconsistent with the public interest, and consummation of the proposed transaction would not result in substantial injury to the carrier employees affected.

In connection with Arrow's participation, the Commission found that The Transport Company, whose stock was wholly owned by Kuhn, Loeb and Company, had an option to purchase Arrow's common stock and would receive Associated's stock therefor when the merger was effected. The stock thus received, together with 9,000 shares of Associated's common stock already held, would give The Transport Company, and through it Kuhn, Loeb and Company, 6,877 shares of Associated's preferred and 67,167 of Associated's common, a total of 13 per cent and 9.53 per cent, respectively, of the preferred and common stocks expected to be outstanding at the conclusion of the transactions.<sup>6</sup> Kuhn, Loeb and Company is represented on the boards of directors of several railroads and for years has had investment banking connections with the Baltimore and Ohio and the Pennsylvania Railroads, each operating in territory to be served by Associated. A representative of Kuhn, Loeb and Company would be one of Associated's nine directors. After examining the blocks of stock which other persons would hold on completion of the consolidation and other matters bearing on the relationship between the pro-

<sup>6</sup> Associated is authorized by its charter to issue 100,000 shares of \$100 par value preferred stock drawing six per cent cumulative dividends annually and 1,000,000 shares of \$1.00 par value common stock. One of the conditions of the Commission's order here is that no par value be assigned the common stock. The Commission found that in exchange for all the outstanding stock of the merged companies (except a small quantity of the preferred stock of two of the carriers which was to be redeemed for cash) Associated was to issue 648,643 shares of its common and 39,949 shares of its preferred stock, which on the cancellation of certain shares in connection with the stock of one of the noncarriers would leave outstanding 633,171 shares of common and 37,942 shares of preferred. Another 15,000 shares of preferred were to be offered to the public in order to enable Associated to obtain surplus cash. The preferred, which like the common was entitled to one vote per share, was convertible into common at the option of the holders, on terms not here relevant. There were 71,486 shares of Associated's common stock outstanding at the time the application was filed; of which 31,240 were held by the president of Associated, 9,000 by The Transport Company (received for engineering accounting data given in connection with the merger), and the remainder by stockholders in the corporations to be merged.

posed merger and the railroads, the Commission concluded that Associated would not be affiliated with any rail carriers. With the elimination of Arrow, of course, the likelihood of any influence on Associated's policies by Transport, and thus by Kuhn, Loeb and Company and the railroads, was substantially reduced.

# I.

The pertinent provisions of the Interstate Commerce Act, which is controlling, are set forth in the margin.<sup>7</sup> Section 5(2) makes

<sup>7</sup> Section 5 provides in pertinent parts:

"Sec. 5. (1) Except upon specific approval by order of the Commission as in this section provided, and except as provided in paragraph (16) of section 1 of this part, it shall be unlawful for any common carrier subject to this part, part II, or part III to enter into any contract, agreement, or combination with any other such common carrier or carriers for the pooling or division of traffic, or of service, or of gross or net earnings, or of any portion thereof; and in any case of an unlawful agreement for the pooling or division of traffic, service, or earnings as aforesaid each day of its continuance shall be a separate offense: *Provided*, That whenever the Commission is of opinion, after hearing upon application of any such carrier or carriers or upon its own initiative, that the pooling or division, to the extent indicated by the Commission, of their traffic, service, or gross or net earnings, or of any portion thereof, will be in the interest of better service to the public or of economy in operation, and will not unduly restrain competition, the Commission shall by order approve and authorize, if assented to by all the carriers involved, such pooling or division, under such rules and regulations, and for such consideration as between such carriers and upon such terms and conditions, as shall be found by the Commission to be just and reasonable in the premises:

"(2)(a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

"(b) Whenever a transaction is proposed under subparagraph (a), the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in section 205 (e)), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing, and a public hearing shall be held in all cases where carriers by railroad are involved. If

lawful a consolidation of the sort here attempted only if the Commission authorizes it. The Commission is empowered to authorize and approve a consolidation either as applied for or as qualified by such terms and conditions as it deems "just and reasonable," if it finds that the merger "will be consistent with the public interest." Section 5(2)(b). In passing upon a proposed consolidation the Commission is required to "give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; . . . (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected." Sections 5(2)(c). The foregoing provisions supply the general statutory standards for guiding the Commission's judgment; and

the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

"(c) In passing upon any proposed transaction under the provisions of this paragraph (2), the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

"(6) For the purposes of this section a person shall be held to be affiliated with a carrier if, by reason of the relationship of such person to such carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or any other direct or indirect means), it is reasonable to believe that the affairs of any carrier of which control may be acquired by such person will be managed in the interest of such other carrier.

"(11) The authority conferred by this section shall be exclusive and plenary, . . . and any carriers or other corporations, and their officers and employees, and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are hereby relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transactions so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction."

within their broad limits, its authority is "exclusive and plenary." Section 5(11).

However, in two particulars, pertinent especially to the issues concerning anti-trust policy and railroad affiliation, Section 5 lays down more explicit commands. One is a specific exemption of carriers and individuals participating in an approved merger "from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transactions so approved . . . and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction." Section 5(11). The other provides the standards to be applied in cases of affiliation of a motor carrier with a railroad. Where a railroad or "any person which is controlled . . . by such a carrier, or affiliated therewith"<sup>8</sup> is an applicant in a consolidation proceeding, the Commission cannot approve the merger "unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition." Section 5(2)(b). In the light of these controlling statutory provisions, the issues must be stated more sharply for proper perspective of what is at stake.

## II.

As has been said, they are intertwined. This is true especially of the issues concerning the propriety of the standards applied and whether due consideration was given to the anti-trust laws and policies, although the question of rail affiliation is closely related to both.

The chief attack on the orders is that the Commission improperly construed the standards by which Congress intended it to determine the propriety of a consolidation; and the burden of this complaint is that it did so "by failing to consider and give due weight to the anti-trust and other laws of the United States." The argument seems to be that the mergers, notwithstanding the Commission's approval, violates the Sherman Act; hence the Commission is without power to approve the merger. This presupposes that Congress did not intend, by enacting the specific exemption

<sup>8</sup> "Affiliated therewith" is defined in Section 5(6), *supra* note 7.

of Section 5(11), to give the Commission leeway to approve any merger which, but for the exemption and the Commission's approval, would run afoul of the anti-trust laws. In other words, the Commission's authority is not "exclusive and plenary," as the section declares, within the boundaries set by the Interstate Commerce Act, including the exemption; but it is restricted also by all the ramifications of the anti-trust laws and policies, to which the Commission must give strict regard in approving motor consolidations, as if the exemption did not exist.

It is conceded this is not true of rail consolidations, though they are authorized, and subjected to the same standards, by the identical sections of the statute. A difference in application of the language is said to arise from the difference which existed in the conditions under which rail and motor carriers, respectively, were brought within the purview of the statutory commands. Thus, it is said, the Transportation Act of 1920 (41 Stat. 456) made a broad departure from previous policy by relieving rail consolidations, with the Commission's approval, from anti-trust restrictions in order to rehabilitate a broken down industry. But, it is also said, such a condition did not characterize motor carriers when they were brought under regulation in 1935 or at the time of any subsequent legislation affecting them. Hence, it is admitted the Commission with propriety may approve a rail consolidation, otherwise prohibited by the anti-trust laws, in order to bring about needed or desirable improvement in service and economies in operation. But, as to motor carriers, it is urged the consolidation cannot be effected with any such purposes or consequences. Only when the existing service is inadequate and consolidation is necessary to bring about adequate service to the public, the argument runs, can the Commission approve it.

On its face the contention would seem to run in the teeth of the language and the purpose of Section 5(11). Nothing in its terms indicates an intention to create one authority for rail consolidations and another for motor mergers. Identical provisions govern both. And to restrict the application of the section to motor carriers in the manner urged would nullify its operation as to them. The attack, when carried to such an extent, comes down to one upon the policy which Congress has declared. It has done so in terms which do not admit of nullification by reference to the varying conditions under which different types of carriers were

brought within the statute's operation. It is not for this Court, or any other, to override a policy, or an exemption from one, so clearly and specifically declared by Congress, whatever may be our views of the wisdom of its action. The argument in its full sweep therefore must be rejected. But, taken for less than that, it poses a problem of accommodation of the Transportation Act and the anti-trust legislation, to which we now turn. In doing so we note that the former is the later in time and constitutes not only a more recent but a more specific expression of policy.

### III.

To secure the continuous, close and informed supervision which enforcement of legislative mandates frequently requires, Congress has vested expert administrative bodies such as the Interstate Commerce Commission with broad discretion and has charged them with the duty to execute stated and specific statutory policies. That delegation does not necessarily include either the duty or the authority to execute numerous other laws. Thus, here, the Commission has no power to enforce the Sherman Act as such. It cannot decide definitively whether the transaction contemplated constitutes a restraint of trade or an attempt to monopolize which is forbidden by that Act. The Commission's task is to enforce the Interstate Commerce Act and other legislation which deals specifically with transportation facilities and problems. That legislation constitutes the immediate frame of reference within which the Commission operates; and the policies expressed in it must be the basic determinants of its action.

But in executing those policies the Commission may be faced with overlapping and at times inconsistent policies embodied in other legislation enacted at different times and with different problems in view. When this is true, it cannot without more ignore the latter. The precise adjustments which it must make, however, will vary from instance to instance depending on the extent to which Congress indicates a desire to have those policies heeded or implemented in the enforcement of the various specific provisions of the legislation with which the Commission is primarily and directly concerned. Cf. *National Broadcasting Co., Inc. v. United States*, 319 U. S. 190; *New York Central Securities Corp. v. United States*, 287 U. S. 12.

The national transportation policy is the product of a long history of trial and error by Congress in attempting to regulate the

nation's transportation facilities beginning with the Interstate Commerce Act of 1887.<sup>9</sup> For present purposes it is not necessary to trace the history of those attempts in detail other than to note that the Transportation Act of 1920 marked a sharp change in the policies and objectives embodied in those efforts.<sup>10</sup> "Therefore, the effort of Congress had been directed mainly to the prevention of abuses; particularly, those arising from excessive or discriminatory rates";<sup>11</sup> and emphasis on the preservation of free competition among carriers was part of that effort.<sup>12</sup> The Act of 1920 added "a new and important object to previous interstate commerce legislation." It sought "affirmatively to build up a system of railways prepared to handle promptly the interstate traffic of the country." *Dayton-Goose Creek R. R. v. United States*, 263 U. S. 456, 478; *Texas & P. R. R. v. Gulf C. & S. F. R. R.*, 270 U. S. 266, 277. And in administering it, the Commission was to be guided primarily by consideration for "adequacy of transportation service, . . . its essential conditions of economy and efficiency, and . . . appropriate provision and best use of transportation facilities . . ." *New York Central Securities Corp. v. United States*, 287 U. S. 12, 25.

Since that initial effort at reshaping regulation of railroads to "ensure . . . adequate transportation service,"<sup>13</sup> Congress has extended federal regulation in connection with other forms of transportation<sup>14</sup> and has elaborated more fully the objectives to

<sup>9</sup> 24 Stat. 379. See Sharfman, *The Interstate Commerce Commission* (1935), Part I, 11-20, and authorities cited, for a concise compilation of the more important legislation implementing the Interstate Commerce Act of 1887 and a reference to some of the impulses leading to the adoption of that Act; see also Healy, *The Economics of Transportation* (1940) ch. 18 *et seq.*

<sup>10</sup> Compare the Interstate Commerce Act of 1887, 24 Stat. 379, and the statutes collected in Sharfman, *supra* note 9, with the Transportation Act of 1920, 41 Stat. 456 [see also MacVeagh, *The Transportation Act of 1920* (1923)], the Emergency Transportation Act of 1932, 48 Stat. 211, and the Transportation Act of 1940, 54 Stat. 898. See also Annual Reports of the Interstate Commerce Commission for 1888, pp. 25-26; 1892, pp. 47-55; 1893, p. 9; 1894, p. 63; 1897, pp. 48-51; 1898, pp. 18-22; 1900, p. 13; 1918, pp. 4-9; 1919, pp. 1-6. See generally Johnson, *Government Regulation of Transportation* (1938); Nelson, *The Role of Regulation Reexamined, Transportation and National Policy*, National Resources Planning Board (May, 1942) 197.

<sup>11</sup> *The New England Divisions Case*, 261 U. S. 184, 189.

<sup>12</sup> Cf. authorities cited *supra* notes 9 and 10. The Interstate Commerce Act of 1887 (24 Stat. 379) was in a sense a shadow cast by the coming Sherman Act (26 Stat. 209). Compare Snyder, *The Interstate Commerce Act and Federal Anti-Trust Laws* (1904) 121-122.

<sup>13</sup> *The New England Divisions Case*, 261 U. S. 184, 189.

<sup>14</sup> Cf. e. g., Air Commerce Act of 1926, 44 Stat. 568, as amended by 48 Stat. 1113; Air Mail Act of 1934, 48 Stat. 933; Air Mail Act of 1935, 49 Stat. 614;

be achieved by its legislation. In 1935 it enacted a comprehensive scheme of regulation for motor carriers, designed to result in "a system of coordinated transportation for the Nation which will supply the most efficient means of transport and furnish service as cheaply as is consistent with fair treatment of labor and with earnings which will support adequate credit and the ability to expand as need develops and to take advantage of all improvements in the art."<sup>15</sup> The policy which was to guide the Commission in administering that Act was fully stated<sup>16</sup> and has since been absorbed into the equally full statement of the National Transportation Policy. That policy, which is the Commission's guide to "the public interest," cf. *New York Central Securities Corp. v. United States*, 287 U. S. 12; *Texas v. United States*, 292 U. S. 522, demands that all modes of transportation subject to the provisions of the Interstate Commerce Act be so regulated as to "recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; . . . all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense." 54 Stat. 899.

The history of the development of the special national transportation policy suggests, quite apart from the explicit provision of

Civil Aeronautics Act of 1938, 52 Stat. 973; Motor Carrier Act of 1935, 49 Stat. 543; and compare Title II of the Transportation Act of 1940, 54 Stat. 898; 929.

<sup>15</sup> Sen. Rep. No. 482, 74th Cong., 1st Sess., 3.

<sup>16</sup> "It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part." 49 Stat. 543.

Section 5(11), that the policies of the anti-trust laws determine "the public interest" in railroad regulation only in a qualified way. And the altered emphasis in railroad legislation on achieving an adequate, efficient, and economical system of transportation through close supervision of business operations and practices rather than through heavy reliance on the enforcement of free competition in various phases of the business, cf. *New York Central Securities Corp. v. United States*, 287 U. S. 12, has its counterpart in motor carrier policy. The premises of motor carrier regulation posit some curtailment of free and unrestrained competition.<sup>17</sup> The origins<sup>18</sup> and legislative history<sup>19</sup> of the Motor Carrier Act adequately disclose that in it Congress recognized there may be occasions when "competition between carriers may result in harm to the public as well as in benefit; and that when a [carrier] inflicts injury upon its rival, it may be the public which ultimately bears the loss." Cf. *Texas & P. R. R. v. Gulf C. & S. F. R. R.*, 270 U. S. 266, 277.

Whatever may be the case with respect either to other kinds of transactions by or among carriers<sup>20</sup> or to consolidations of different types of carriers,<sup>21</sup> there can be little doubt that the Com-

<sup>17</sup> No motor carrier can operate in interstate commerce without a certificate of public convenience and necessity, 49 U. S. C. § 306, 49 Stat. 551, 52 Stat. 1238, 54 Stat. 923. Compare Monograph No. 21, Temporary National Economic Committee, 76th Cong., 3rd Sess., 268.

The Reports of the Coordinator of Transportation (Sen. Doc. No. 152, 73d Cong., 2d Sess.; H. Doc. 89, 74th Cong., 1st Sess.) on which the Act is in large measure based (79 Cong. Rec. 12207; Sen. Rep. No. 482, 74th Cong., 1st Sess.; H. R. Rep. No. 1645, 74th Cong., 1st Sess.) disclose graphically that among the evils with which the motor carrier industry was afflicted and which would be cured by the Act was unrestrained competition. It was anticipated that the Act would confer benefits on the industry "by promoting a more orderly conduct of the business, lessening irresponsible competition and undue internal strife, encouraging the organization of stronger units, and otherwise enabling the industry to put itself on a sounder and more generally profitable basis." H. Doc. 89, 74th Cong., 1st Sess. (1934) 127.

<sup>18</sup> See particularly the Reports of the Coordinator of Transportation, cited *supra* note 17.

<sup>19</sup> Sen. Rep. No. 482, 74th Cong., 1st Sess.; 79 Cong. Rec. 12206.

<sup>20</sup> Even after the major shift in policy reflected in the Transportation Act of 1920, Congress left it abundantly clear that the preservation of competition and the elimination of monopolistic practices in many phases of the transportation industry was a desideratum. See e.g., 15 U. S. C. §§ 13, 34, 18-21; 38 Stat. 739 *et seq.*, 48 Stat. 1102, 49 Stat. 1526-1528; 31 L. C. P. 32, 61, 31 L. C. C. 351, 413-414; and Section 5-1 of the Interstate Commerce Act, 41 Stat. 480-481, 54 Stat. 905; and compare *Chesapeake & Ohio R. R. v. United States*, 283 U. S. 35.

<sup>21</sup> Cf. 49 U. S. C. § 5, 14, 16; 37 Stat. 566, 41 Stat. 482, 54 Stat. 909. In connection with the consolidation of rail and motor carriers Congress was explicit on the subject of competition in its mandate to the Commission. Fear-

mission is not to measure proposals for all-rail or all-motor consolidations by the standards of the anti-trust laws. Congress authorized such consolidations because it recognized that in some circumstances they were appropriate for effectuation of the national transportation policy. It was informed that this policy would be furthered by "encouraging the organization of stronger units" in the motor carrier industry.<sup>22</sup> And in authorizing those consolidations it did not import the general policies of the anti-trust laws as a measure of their permissibility.<sup>23</sup> It in terms relieved participants in appropriate mergers from the requirements of those laws. Section 5 (11). In doing so, it presumably took into account the fact that the business affected is subject to strict regulation and supervision, particularly with respect to rates charged the public—an effective safeguard against the evils attending monopoly, at which the Sherman Act is directed. Against this background, no other inference is possible but that, as a factor in determining the propriety of motor-carrier consolidations the preservation of competition among carriers, although still a value,<sup>24</sup> is significant chiefly as it aids in the attainment of the objectives of the national transportation policy.

Therefore, the Commission is not bound, as appellants urge, to accede to the policies of the anti-trust laws so completely that

ful of the dangerous potentialities which such coordination might create: see 79 Cong. Rec. 5654-5655, 12206, 12222-12225. Congress prescribed more rigorous requirements for that process than for simple motor carrier consolidations. For the latter approval may be granted if the Commission finds the transaction "consistent with the public interest." For a rail carrier to consolidate with a motor carrier, Commission approval requires a finding that the transaction will "be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition." Compare the language of Section 213 (a) of the Motor Carrier Act of 1935, 49 Stat. 555-556, 52 Stat. 1239, (and cf. 80 Cong. Rec. 11546) with that of Section 5 of the Transportation Act of 1940.

<sup>22</sup> Cf. note 17 *supra*. Authorization of consolidation of rail carriers stems historically from circumstances different from those impelling the authorization of consolidation of motor carriers. Compare authorities cited in notes 9 and 10 *supra* with those in notes 17-19 *supra*. This difference in origins is not entirely to be ignored simply because the same provisions of Section 5 now govern both motor carrier and rail carrier consolidations. Cf. 80 Cong. Rec. 11546. But whatever effect the difference may have as a guide to the Commission concerning the extent to which and circumstances in which consolidation should be allowed it cannot nullify the power given to the Commission by Section 5 (11).

<sup>23</sup> Compare the provisions of the statutes cited *supra* notes 20 and 21.

<sup>24</sup> Cf. note 20 *infra*; compare also 41 Stat. 481-482, *Chesapeake and Ohio R. R. v. United States*, 283 U. S. 35; *MacVough, The Transportation Act of 1920* (1923) 275-292.

only where "inadequate" transportation facilities are sought to be made "adequate" by consolidation can their dictates be overborne by "the public interest." That view, in effect, would require the Commission to permit only those consolidations which would not offend the anti-trust laws. As has been said, this would render meaningless the exemption relieving the participants in a properly approved merger of the requirements of those laws, and would ignore the fact that the Motor Carrier Act is to be administered with an eye to affirmatively improving transportation facilities, not merely to preserving existing arrangements or competitive practices.<sup>25</sup> Compare *Dayton-Goose Creek R. R. v. United States*, *supra*; *The New England Divisions Case*, *supra*.

Congress however neither has made the anti-trust laws wholly inapplicable to the transportation industry nor has authorized the Commission in passing on a proposed merger to ignore their policy. Congress recognized that the process of consolidating motor carriers would result in some diminution of competition and might result in the creation of monopolies. To prevent the latter effect and to make certain that the former was permitted only where appropriate to further the national transportation policy, it placed in the Commission power to control such developments.<sup>26</sup> The national transportation policy requires the Commission to "promote . . . economical . . . service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, or undue preferences or advantages. . . ." The preservation of independent and competing motor carriers unquestionably has bearing on the achievement of those ends. Hence, the fact that the carriers participating in a properly authorized consolidation may obtain immunity from prosecution under the anti-trust laws in no sense relieves the Commission of its duty, as an administrative matter, to consider the effect of the merger on competitors and on the general competitive situation in the industry in the light of the objectives of the national transportation policy.

<sup>25</sup> Cf. note 17 *supra*.

<sup>26</sup> E. g., Senator Wheeler, in charge of the measure in the Senate, said:

"At present most truck operations are small enterprises. However, there are many rumors of plans for the merging of existing operations into sizable systems. In view of past experience with railroad and public utility unifications, it is regarded as necessary that the Commission have control over such developments, where the number of vehicles involved is sufficient to make the matter one of more than local importance." 79 Cong. Rec. 5654-5655.

"In short, the Commission must estimate the scope and appraise the effects of the curtailment of competition which will result from the proposed consolidation, and consider them along with the advantages of improved service, safer operation, lower costs, etc., to determine whether the consolidation will assist in effectuating the over-all transportation policy. Resolving these considerations is a complex task which requires extensive facilities, expert judgment and considerable knowledge of the transportation industry. Congress left that task to the Commission "to the end that the wisdom and experience of that Commission may be used not only in connection with this form of transportation, but in its coordination of all other forms." 79 Cong. Rec. 42207. "The wisdom and experience of that commission," not of the courts, must determine whether the proposed consolidation is "consistent with the public interest". Cf. *Interstate Commerce Commission v. Illinois Central R. R.*, 215 U. S. 452; *Pennsylvania Co. v. United States*, 236 U. S. 351; *United States v. Chicago Heights Trucking Co.*, 310 U. S. 344; *Purcell v. United States*, 315 U. S. 381. If the Commission did not exceed the statutory limits within which Congress confined its discretion and its findings are adequate and supported<sup>27</sup> by evidence, it is not our function to upset its order.

#### IV.

The Commission found, as has been noted, that the proposed consolidation would result in improved transportation service, greater efficiency of operation and substantial operating economies. The higher load factor on trucks, reduction in the number of trucks used and the mileage traversed would lead to more efficient use of equipment and save motor fuel. Terminal facilities would be consolidated and used more effectively, through movement of freight would reduce costs and in a multitude of other ways the stability and safety of the service rendered would be enhanced<sup>27</sup>. The Commission also considered the extent to which competition among the merging carriers would be diminished, the effects of the consolidation on competing carriers and the consequences for transportation service and motor carrier operations in general in the

<sup>27</sup> E. g., tracing shipments and settlement of claims would be facilitated, congestion at shipping platforms would be reduced, the average life of the equipment would be lengthened by scientific maintenance and safety programs on a large scale, vehicles would be shifted quickly to meet peak demands on certain routes, etc.

16 *McLean Trucking Co., Inc., et al. vs. United States et al.*

areas affected. It found that in each of the areas served by the present components of the merger there are from 44 to more than 100 Class I carriers, many of which were regular route common carriers of general commodities, comparable in size—insofar as size is disclosed by operating revenues—to some of the participants in the consolidation. Between the principal points in each of the areas served substantial competition by independent Class I carriers now exists. While none of these carriers operates a through service over the entire area to be served by Associated, the Commission found that rail carrier service competes at all the principal points to be served by Associated, and that contract carriers also offer competition.

The Commission determined, on the basis of facts appearing in the record and its experience with other consolidations, that it was not likely that Associated's size and competitive advantages would enable it to control the price and character of interchange traffic, to drain off substantial amounts of shippers' business or in other ways to smother the competition of other motor carriers. It concluded that ample competition would remain and, weighing all the factors, that the consolidation was "consistent with the public interest."

Necessarily in its inquiry the Commission had to speculate to some extent as to the future consequences and effects of a present consolidation. But it based its judgment on available facts as to present operations and business practices and past experience with transportation operations and analogous transactions.

We cannot say that the Commission measured "the public interest" by standards other than those Congress provided, or that its findings do not comply with the requirements of the Act. The material findings are supported by evidence; and while a more meticulous regard for its function might have impelled the Commission to accede to the Anti-Trust Division's request, for certain information from other shippers bearing on the question of competition we do not think its failure to do so requires, on this record, that its conclusions be overturned.

V.

Appellants also attack the propriety of the Commission's conclusion that Associated is not, and would not be, on consummation of the consolidation, "affiliated" with any railroad. Whatever

might have been the case if Arrow had been included in the merger, a different question is presented by the orders now under review.

Section 5(2) provides:

That if . . . any person which is controlled by a [rail] carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

Section 5(6) provides:

For the purposes of this section a person shall be held to be affiliated with a carrier if, by reason of the relationship of such person to such carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or any other direct or indirect means), it is reasonable to believe that the affairs of any carrier of which control may be acquired by such person will be managed in the interest of such other carrier.

The only relevant evidence now pointing toward affiliation of the applicant with rail carriers are the facts that Kuhn, Loeb and Company indirectly owns 9,000 shares of Associated's common stock, has one representative among the nine directors of Associated, has investment banking connections with competing rail carriers, and is represented on the boards of directors of other railroads. For present purposes we may assume that by virtue of those connections the rail carriers' interests will be the banking house's interests in directing the affairs of Associated. But aside from the proportionately small 9,000 out of 1,000,000 common shares' stock ownership and the place on the board of directors, the Commission found no connection—either in the origins of the present proposal or in personnel, financing or otherwise—between Kuhn, Loeb and Company and the rail carriers on the one hand and Associated on the other. This contrasts sharply with the circumstances in *Transport Co.*, 36 M. C. C. 64, where a much larger merger of eastern motor carrier operators, sought to be consummated with at least the assistance of Kuhn, Loeb and Company, was denied approval by the Commission. And in the present

18. *McLean Trucking Co., Inc., et al. vs. United States et al.*

merger others, not associated, so far as this record shows, with Kuhn, Loeb and Company or rail carriers would have substantial blocks of stock.<sup>28</sup> We cannot find anything arbitrary or unreasonable in the conclusion that the consolidation as finally authorized will not result in Associated's being affiliated with a carrier by rail. It may be added that under the Commission's order in this case the relatively close holdings which will emerge from the consolidation cannot be altered without the Commission's approval. And it is the consolidation as approved which is exempted from the operation of the anti-trust laws and the prohibition against rail affiliation without approval. Any future change which may bring the consolidation into clash with either prohibition may be considered when it arises.

Accordingly the judgment is

*Affirmed.*

Mr. Justice MURPHY is of the opinion that the judgment should be reversed.

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<sup>28</sup> E. g., H. D. Horton and the members of his family will own 14,917 shares of Associated's preferred stock and 267,873 shares of its common stock. The stockholders of Consolidated also would own substantially greater blocks than the 9,000 shares which Kuhn, Loeb and Company controls.

# SUPREME COURT OF THE UNITED STATES.

No. 31.—OCTOBER TERM, 1943.

McLean Trucking Company, Inc., The  
Secretary of Agriculture of the  
United States, and American Farm  
Bureau Federation, Appellants,

vs.

The United States of America, Inter-  
state Commerce Commission, Asso-  
ciated Transport, Inc., Barnwell  
Brothers, Inc., et al.

Appeal from the District  
Court of the United  
States for the Southern  
District of New York.

[January 17, 1944.]

Mr. Justice DOUGLAS, with whom Mr. Justice BLACK  
concurs, dissenting.

I think that the Commission misconceived its authority under the merger and consolidation provisions of the Act. I agree that the Commission is not to measure motor vehicle consolidations by the standards of the anti-trust acts. Such a construction would make largely meaningless, as the opinion of the Court demonstrates, the power of the Commission under § 5(11) to relieve participants in mergers or consolidations from the requirements of those acts. But I think a proper construction of the Act requires the Commission to give greater weight to the principles of competition than it apparently has done here.

I agree that the standard of the "public interest" which governs mergers and consolidations under § 5 embraces the national transportation policy contained in the Act. That declared policy calls, among other things, for the recognition and preservation of "the inherent advantages" of motor vehicle transportation; the promotion of "safe, adequate, economical, and efficient service" and the fostering of "sound economic conditions in transportation and among the several carriers"; the establishment and maintenance of reasonable charges "without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive prac-

ties"—to the end of "developing, coordinating, and preserving a national transportation system" which is "adequate to meet" the national needs. 54 Stat. 899. Those standards are specifically referred to in § 5(2)(c) where an itemization of some of the factors to which the Commission shall give weight is made. And the preamble itself states that "All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

But I am of the opinion that the concept of the "public interest" as used in § 5 also embraces the anti-trust laws. Those laws extend to carriers as well as to other enterprises. But for the approval of the Commission the present consolidation would run afoul of the Sherman Act: *United States v. Southern Pacific Co.*, 259 U. S. 214. And the Clayton Act (which makes specific references to common carriers) by § 11 expressly entrusts the Commission with the authority of enforcement of its provisions "where applicable to common carriers." 38 Stat. 734, 15 U. S. C. § 21. Those laws still stand. We thus have a long standing policy of Congress to subject these common carriers to the anti-trust laws. And we should remember that, so far as motor vehicles are concerned, we are dealing with transportation units whose rights of way—the highways of the country—have been furnished by the public. These considerations indicate to me that while the power of Congress to authorize the Commission to lift the ban of the anti-trust laws in favor of common carriers is clear (*New York Central Securities Corp. v. United States*, 287 U. S. 12, 25-26), administrative authority to replace the competitive system with a cartel should be strictly construed. I would read § 5 of the Transportation Act so as to make for the greatest possible accommodation between the principles of competition and the national transportation policy. The occasions for the exercise of the administrative authority to grant exemptions from the anti-trust laws should be closely confined to those where the transportation need is clear.

If it were the opinion of the Commission that the policy of the Transportation Act would be thwarted unless a particular type of merger or consolidation were permitted, I have no doubt that it would be authorized to lift the ban of the anti-trust laws. But unless such necessity or need were shown I do not think the anti-trust laws should be made to give way. Congress did not give the Commission *carte blanche* authority to substitute a cartel for a

competitive system. It may so act only when that step "will be consistent with the public interest". § 5(2)(b). But since the "public interest" includes the principles of free enterprise, which have long distinguished our economy, I can hardly believe that Congress intended them to be swept aside unless they were in fact obstacles to the realization of the national transportation policy. But so far as we know from the present record that policy may be as readily achieved on a competitive basis as through the present type of consolidation. At least such a powerful combination of competitors as is presently projected is not shown to be necessary for that purpose. In this case the hand of the promoter seems more apparent than a transportation need.

For these reasons I would resolve the ambiguities of the Act in favor of the maintenance of free enterprise. If that is too niggardly an interpretation of the Act, Congress can rectify it. But if the Commission is allowed to take the other view,<sup>1</sup> a pattern of consolidation will have been approved which will allow the cartel rather than the competitive system to dominate this field. History shows that it is next to impossible to turn back the clock once such a trend gets under way.

But there is another phase of the case which in my view requires a reversal of the judgment below. The Commission has allowed the investment banker of railroad companies to be represented on the board of the motor vehicle company. It did so after a finding that it was not "reasonable to believe that the affairs of applicant would be managed in the interest of any railroad" and therefore that the motor vehicle company would not be affiliated with any railroad within the meaning of the Act. § 5(5)(a), (6). But though we assume there was no such affiliation, I agree with Commissioner Patterson that that is not the end of the matter. The question still remains whether it is "consistent with the public interest" to allow such a banker's nexus between the two competitors. I cannot believe that Congress intended the Commission to treat such a matter as inconsequential. The whole history of finance urges caution when one investment banker stakes out his claim to

<sup>1</sup> The position here taken is substantially the view which originally obtained in the Commission: *Northland-Greyhound Lines, Inc.*, 5 M. C. C. 123; *Richmond-Greyhound Lines, Inc.*, 35 M. C. C. 555. But that view did not long obtain. See *Northland-Greyhound Lines, Inc.*, 25 M. C. C. 109; *Richmond-Greyhound Lines, Inc.*, 36 M. C. C. 747. And see Meek & Bogue, *Federal Regulation of Motor Carrier Unification*, 50 *Yale L. Journ.* 1376, 1393-1397.

4 *McLean Trucking Co., Inc., et al. vs. United States et al.*

two competing companies. Experience shows that when one gains a seat at his competitor's table, it is the beginning of the end of competition. A new zone of influence has been created. Its efficacy turns not on the amount of stock ownership but on a host of subtle and imponderable considerations. Such an intertwined relationship has been "the root of many evils" (Brandeis, *Other People's Money*, p. 51) and so demonstrably inimical to the "public interest" in the past as not to be disregarded today.

I agree that if § 5 were read as the Court reads it, the order of the Commission should be affirmed. But since the Commission took a view of the law which in my opinion was erroneous, I would reverse the judgment below so that the case might be returned to the Commission for reconsideration of the application under the proper construction of § 5.